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March 6, 1997

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are fifteen (15) copies of a Capital Lease Agreement, dated as of March 7, 1997, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Lessor: Railcar Leasing, L.L.C.  
P.O. Box 98135  
Las Vegas, Nevada 89193

Lessee: Aardvark Railcar Associates, Inc.  
33 West Monroe Street  
Chicago, Illinois 60603

A description of the railroad equipment covered by the enclosed document is set forth in Appendix A attached to the Lease Agreement, consisting of 8572 ACF Railcars, with the Lease Outs relating thereto set forth in Schedule B attached.

Mr. Vernon A. Williams

March 6, 1997

Page 2

Also enclosed is a check in the amount of \$24 00 payable to the order of the Surface Transportation Board covering the required recordation fee

Kindly return fourteen (14) stamped copy of the enclosed document to the undersigned

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", with a stylized flourish at the end.

Robert W Alvord

RWA/bg  
Enclosures

SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20427-0001

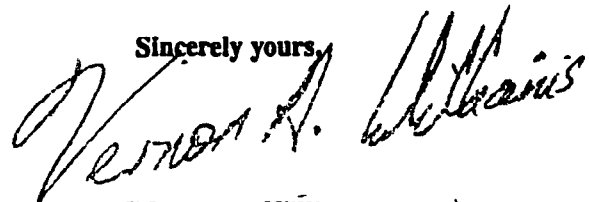
3/6/97

.. Robert W. Alvord....  
.. Alvord And Alvord  
.. 918 Sixteenth St., NW., Ste. 200  
.. Washington, DC., 20006-2973

Dear Sir. ....

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/8/97 at 4:00PM , and assigned recordation number(s). 20565, 20566, 20567, 20568, 20568-A, 20568-B and 20568-C.

Sincerely yours,

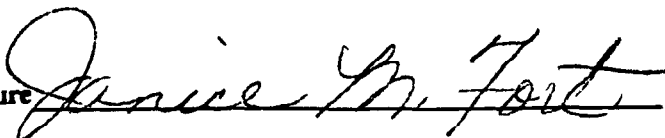


Vernon A. Williams  
Secretary

Enclosure(s)

\$ 168.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



RECORDATION NO. 20566 FILED 1425  
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## CAPITAL LEASE AGREEMENT

Dated as of March 7, 1997

between

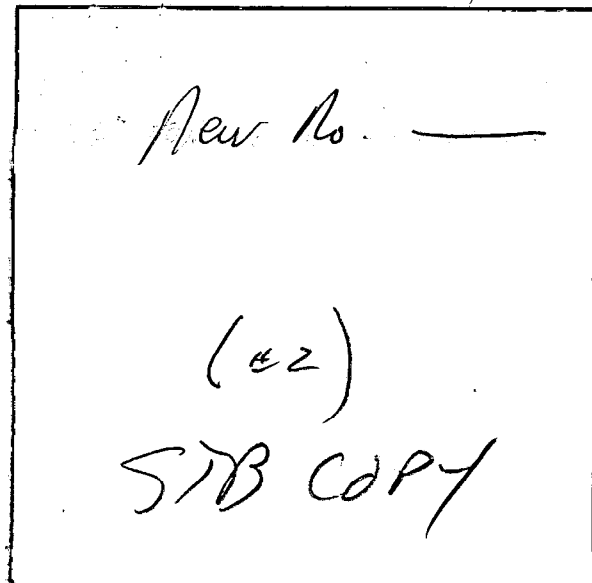
Railcar Leasing, L.L.C.

Lessor

and

Aardvark Railcar Associates, Inc.

Lessee



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Appendix A	-	Description of Railcars
Schedule A	-	Capital Improvements
Schedule B	-	Lease-outs
Schedule C	-	Location and Destination of all Railcars Not Subject to Lease-outs
Schedule D	-	Section 9.1(a) Information
Schedule E	-	Actions Requiring Consent of Members of the Lessor Other Than Affiliates of the Lessee
Schedule F	-	Discount Rate

CAPITAL LEASE AGREEMENT, dated as of March 7, 1997, between Railcar Leasing, L.L.C., a Delaware limited liability company (the "Lessor"), and Aardvark Railcar Associates, Inc., a Delaware corporation (the "Lessee").

WHEREAS, the members of the Lessor are Aardvark Railcar, L.P., a Delaware limited partnership ("GE Member"), ACF Industries, Incorporated, a New Jersey corporation ("ACF"), American Car Line Company, a Delaware corporation (the "ACF Subsidiary" and, together with ACF, the "ACF Contributors"), and AMACAR Investments, L.L.C., a Delaware limited liability company (the "Third-Party Member");

WHEREAS, pursuant to the Participation Agreement, dated as of the date hereof, among General Electric Railcar Services Corporation, a Delaware corporation ("GE Rail"), Aardvark Railcar, Inc., a Delaware corporation ("GE Partner" and, together with GE Rail, the "GE Contributors"), GE Member, General Electric Capital Corporation, a New York corporation ("GECC" or "Guarantor"), the Third-Party Member, the ACF Contributors and the Lessor (as amended or supplemented from time to time, the "Participation Agreement") and certain asset contribution agreements, dated as of the date hereof, in connection therewith, (i) the ACF Contributors have contributed to the Lessor the Contributed ACF Assets (as defined in the Participation Agreement) (other than the GE Member Contributor ACF Assets (as defined in the Participation Agreement)), ACF has contributed to the GE Member the GE Member Contributed ACF Assets, the GE Member has contributed to the Lessor the GE Member Contributed ACF Assets, and the Lessor has assumed certain obligations with respect to the Contributed ACF Assets, (ii) the GE Contributors have contributed to GE Member, and GE Member has contributed to the Lessor, the Contributed GE Assets (as defined in the Participation Agreement), and the Lessor has

assumed certain obligations with respect to the Contributed GE Assets, and (iii) the Third-Party Member has contributed to the Lessor a certain amount of cash;

WHEREAS, the Lessee desires to lease from the Lessor the Contributed ACF Assets and the Contributed GE Assets, and with respect thereto the Lessor and the Lessee have agreed to enter into this Capital Lease, a TH Railcar Lease Agreement, dated as of the date hereof, between the Lessor, as lessor, and the Lessee, as lessee (the "TH Railcar Lease"), and a Master Lease Agreement, dated as of the date hereof, between the Lessor, as lessor, and the Lessee, as lessee (the "Master Lease");

WHEREAS, as a condition precedent to and consideration for the Lessee's entering into this Capital Lease, the TH Railcar Lease and the Master Lease, (i) Starfire Holding Corporation, a Delaware corporation, has executed and delivered to the Lessee an ERISA Indemnity Agreement, dated as of the date hereof (the "ERISA Indemnity"), in favor of the Lessor and the Lessee, (ii) the Lessor has executed and delivered to the Lessee the Security Agreement, dated as of the date hereof (the "Lessee Security Agreement"), pursuant to which the Lessor has granted the Lessee a second priority security interest in the Railcars (as defined herein) and all other assets of the Lessor as collateral for the performance of the indemnity and other payment obligations of the ACF Contributors and any Affiliate thereof under the Transaction Documents, the indemnitor's obligations to the Lessee under the ERISA Indemnity and the Owner Participant's (as defined in the Tax Indemnity Agreement) payment obligations under the Tax Indemnity Agreement, dated as of the date hereof (the "Tax Indemnity Agreement"), and (iii) the ACF Contributors have executed and delivered to the Lessee a Security Agreement, dated as of the date hereof (the "ACF Contributors Security Agreement"), pursuant to which the ACF Contributors have granted the Lessee a security interest in distributions in respect of, and proceeds of



any sale or financing of, their membership interests in the Lessor, in each case as collateral for the performance of the indemnity and other payment obligations of the ACF Contributors and any Affiliate thereof under the Transaction Documents, the indemnitor's obligations to the Lessee under the ERISA Indemnity and the Owner Participant's payment obligations under the Tax Indemnity Agreement; and

WHEREAS, as a condition precedent to and consideration for the Lessor's entering into this Capital Lease and the Master Lease, (i) the Guarantor has executed and delivered to the Lessor a Lease Guaranty, dated as of the date hereof (the "Guaranty"), in favor of the Lessor, and (ii) the Lessee has executed and delivered to the Lessor the Tax Indemnity Agreement in favor of the Lessor and the Owner Participants (as defined therein), and (iii) the Guarantor has executed and delivered to the Lessor its guaranty of the Lessee's obligations under the Tax Indemnity Agreement;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Lessor hereby leases to the Lessee, and the Lessee hereby hires from the Lessor, the Railcars, and the Lessor hereby assigns the Contributed Rights (as defined herein) to the Lessee, and the Lessee hereby assumes and agrees to perform and discharge the Assumed Obligations (as defined herein) for the Term (as defined herein) of this Lease, upon the following terms and conditions:

Section 1.

DEFINITIONS

The following terms shall have the following meanings for all purposes of this Capital Lease Agreement and such meanings shall be equally applicable to both the singular and plural forms of the terms herein defined:

"AAR" shall mean the Association of American Railroads, any successor organization, and any organization from time to time succeeding to the authority and functions of the Association of American Railroads as currently existing and exercised.

"AAR Depreciated Value" shall mean, with respect to any Railcar or railcar, the amount payable as the settlement value in the event of a total loss thereof pursuant to AAR Interchange Rule 107 or any successor rule.

"ACF" shall have the meaning set forth in the Recitals hereto.

"ACF Adjustment Car" shall have the meaning set forth in the Participation Agreement.

"ACF Contributors" shall have the meaning set forth in the Recitals hereto.

"ACF Pension Liabilities" shall mean all "Losses," as defined under the ERISA Indemnity.

"ACF Contributors Security Agreement" shall have the meaning set forth in the Recitals hereto.

"Administrative Service Agreement" shall mean the Administrative Service Agreement, dated as of the date hereof, between ACF and GE Rail, as amended from time to time.

"Affiliate" shall mean, with respect to any Person, any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such

Person. For purposes of this Lease, (w) the ACF Contributors shall be deemed to be Affiliates of the Lessor, (x) neither, the Third-Party Member, any GE Contributor, the Guarantor nor any of their respective Affiliates shall be deemed to be an Affiliate of the Lessor, (y) the GE Member shall not be deemed to be an Affiliate of the Lessor; provided, however, that the GE Member shall be deemed to be an Affiliate of the Lessor to the extent, and only to the extent, that any act or omission of, or obligation or liability attributable to, the GE Member arises out of, results from or relates to the Contributed ACF Assets, the Assumed ACF Liabilities, the Excluded ACF Assets or the Excluded ACF Liabilities (in each case as defined in the Participation Agreement) or any action of an ACF Contributor as a partner of the GE Member, and (z) the Lessor and the Lessee shall not be deemed to be Affiliates of each other.

"Applicable Laws" shall have the meaning specified in Section 10.2 hereof.

"Arbitration Rules" shall mean the Commercial Arbitration Rules and Procedures of the American Arbitration Association in effect upon the initiation of the applicable proceeding under Section 13(c).

"Assumed Obligations" shall mean the liabilities and obligations assumed by the Lessor pursuant to the Participation Agreement and the related Assumption Agreements (as defined in the Participation Agreement).

"Assumption" shall mean the assumption by the Lessee of the Notes and the Indenture, together with the unconditional guaranty of Lessee's payment obligations thereunder by the Guarantor on an unsubordinated basis, upon the closing of the Purchase Option, as evidenced by the execution and delivery of the Assumption Documents (as defined in the Indenture) by the parties thereto.

"Basic Term" shall mean the period set forth in Section 5 hereof.

"Basic Term Commencement Date" shall mean the date hereof.

"Business Day" shall mean any day except Saturday, Sunday or any other day on which commercial banks in Chicago, Illinois, Las Vegas, Nevada or New York, New York are authorized or required by law to close

"Capital Improvements" shall mean any and all modifications, alterations, improvements, enhancements, additions, betterments and rehabilitations made by or on behalf of the Lessee to Railcars which are reasonably necessary, expected or desirable to improve or preserve revenue generating capability, change mechanical designation or extend the life, or are necessary to comply with applicable governmental and AAR laws, rules and regulations, including but not limited to such projects and programs as 70 ton to 100 ton conversions, twin hopper conversions, and rebuilding of railcars in accordance with AAR Rule 88, and the items listed on Schedule A attached hereto. Any running repairs that are performed in conjunction with the foregoing (but no other running repairs) will be deemed to be Capital Improvements.

"Casualty" shall mean any Event of Loss, other than the classification or designation of a Railcar as a Scrap Railcar.

"Claimant" shall have the meaning specified in Section 12(c) hereof.

"Claims Arbiter" shall have the meaning specified in Section 13(c) hereof.

"Class A-1 Notes" shall mean the 6.75% Class A-1 Senior Secured Notes due July 15, 2006, issued pursuant to the Indenture.

"Class A-2 Notes" shall mean the 7.125% Class A-2 Senior Secured Notes due January 15, 2013, issued pursuant to the Indenture.

"Comparative Fault" shall mean, with respect to any Loss (other than ACF Pension Liabilities, which in all instances shall be allocated to the ACF Contributors) incurred by (i) the GE Contributors, the Guarantor or the Lessee, (ii) the ACF

Contributors, (iii) the Lessor, (iv) the GE Member or (v) any of their respective successors, permitted assigns, Affiliates (other than the Lessor), beneficiaries, trustees, partners, members, stockholders, officers, directors, employees, agents or representatives, the allocation of such Loss as between such Persons (regardless of any allocation thereof between any such Person and any third party), based upon the following factors, giving progressively more weight to each successive factor:

- (a) when the events or state of facts giving rise to such Loss occurred or existed,
- (b) when the event or state of facts giving rise to such Loss, based on customary commercial practice in the railcar leasing industry, should have been discovered, and
- (c) when the event or state of facts giving rise to such Loss, based on customary commercial practice in the railcar leasing industry, should have been prevented or corrected,

in each case in light of all of the relevant facts and circumstances relating to such Loss; provided, however, that, in the case of ACF Adjustment Cars, Returned ACF Railcars or Lessee Purchased Cars, the date of the actual transfer of possession (rather than the deemed date of contribution) of such railcars rather than the Basic Term Commencement Date shall be taken into account in determining Comparative Fault. Notwithstanding anything herein to the contrary, neither Comparative Fault nor any limitation of liability in connection therewith shall apply to ACF Pension Liabilities or any Loss or indemnification or other obligation to the extent relating thereto or to any obligation or liability of any indemnitor to the extent relating to the ERISA Indemnity.

"Contracts" shall refer to each and all of the following written items, in any case to the extent relating to any Railcar: leases (including, without limitation, End-

User Leases), contracts, guarantees and other security agreements, sales orders, purchase orders and other agreements, arrangements, understandings and commitments, but shall not include any insurance policies.

"Contributed Rights" shall mean the Contributed ACF Assets and the Contributed GE Assets (each as defined in the Participation Agreement and including, without limitation, the Lease-outs), other than any portion thereof included under the provisions hereof in the Railcars, and any cash, collateral and other amounts the Lessor is entitled to receive under Section 2.6, 2.8, 3.6, 3.7, 4.2, 4.3 or 4.4 of the Participation Agreement.

"Default Interest" shall have the meaning specified in Section 4.2.

"Discount Rate" shall mean, with respect to any date of calculation, the annual rate for such date determined in accordance with Schedule F hereto.

"Early Purchase Price" shall have the meaning specified in Section 16.1(b), subject to setoff and withholding solely as provided for in this Lease.

"End-User Leases" shall mean, all Lease-outs and all subleases by the Lessee of the Railcars to any Person to the extent permitted by and in accordance with the terms and conditions of this Lease.

"Environmental Losses" shall have the meaning specified in Section 12(d) hereof.

"Environmental Matters" shall have the meaning specified in the Participation Agreement.

"ERISA Indemnity" shall have the meaning set forth in the Recitals hereto.

"Event of Default" shall have the meaning specified in Section 14.1 hereof.

"Event of Loss" shall mean, with respect to any Railcar, that such Railcar (i) shall become a Scrap Railcar; (ii) shall suffer an event which involves (x) an actual

total loss, (y) a constructive total loss or (z) a compromised total loss as a result of an insurance settlement or payment of AAR Depreciated Value by an insurer, the lessee under an End-User Lease or any other Person; (iii) shall become subject to any expropriation or requisition of title by any Governmental Authority; or (iv) in the reasonable judgment of the Lessee (exercised in a manner substantially equivalent (without intentional discrimination) to the practice of the Lessee and its Affiliates with respect to similar equipment whether owned or (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them), shall be lost, stolen or (except as contemplated by clause (iii)) permanently seized, confiscated, taken or requisitioned by condemnation or otherwise.

"Excess Condemnation Proceeds" shall mean that portion of condemnation proceeds arising from any Event of Loss that exceeds the Fair Market Value at the time of such Event of Loss of the Railcar subject to such Event of Loss.

"Excluded Taxes" shall have the meaning specified in Section 13(d) hereof.

"Fair Market Value" shall mean, with respect to any Railcar or railcar, the purchase price for such Railcar or railcar which would be obtained in an arm's-length transaction between an informed and willing buyer under no compulsion to buy and an informed and willing seller under no compulsion to sell.

"Finally Determined" shall mean (i) with respect to any claim, action, suit or proceeding or federal, state, local or foreign governmental or administrative order, that (A) such matter has been determined by the Claims Arbiter or a court of competent jurisdiction to be, or any ACF Contributor or parent or subsidiary thereof has agreed in writing that such matter is, a matter for which an ACF Contributor or parent or subsidiary thereof has an obligation to indemnify pursuant to any Transaction Document (or contribute pursuant to Section 9.5 of the Participation Agreement) or

(B) such matter has been determined by the Claims Arbiter or a court of competent jurisdiction to be, or the Guarantor, the Lessee or any GE Contributor has agreed in writing that such matter is, a matter for which the Guarantor, the Lessee or any GE Contributor has an obligation to indemnify pursuant to any Transaction Document (or contribute pursuant to Section 9.5 of the Participation Agreement) and (ii) with respect to any Loss, such Loss has actually been incurred or, where a Transaction Document specifically provides for the determination of estimated Losses by the Claims Arbiter, in an amount to be incurred by a Person entitled to claim indemnification (or contribution pursuant to Section 9.5 of the Participation Agreement) with respect to a claim, action, suit or proceeding or federal, state, local or foreign governmental or administrative order which has been Finally Determined pursuant to clause (i); provided that if the amount of any such Loss or any obligation to indemnify (or contribute pursuant to Section 9.5 of the Participation Agreement) with respect thereto is disputed or any such Loss is alleged to have been improperly incurred, the portion of such Loss which is disputed or alleged to have been improperly incurred shall not be deemed to be Finally Determined unless and until such amount has been determined by the Claims Arbiter or a court of competent jurisdiction to represent, or an ACF Contributor or parent or subsidiary thereof, on the one hand, or the Guarantor, the Lessee or any GE Contributor, on the other hand, has agreed in writing that the amount of such Loss represents, a Loss actually or properly incurred, as the case may be, by the Person claiming indemnity (or contribution pursuant to Section 9.5 of the Participation Agreement) therefor.

"First Transition Agreement" shall mean the Transition Agreement, dated as of the date hereof, among the ACF Contributors, American Railcar Industries, Inc., a Missouri corporation, GE Rail and the Lessee, as amended from time to time.



"GECC" shall have the meaning set forth in the Recitals hereto.

"GE Contributors" shall have the meaning set forth in the Recitals hereto.

"GE Member" shall have the meaning set forth in the Recitals hereto.

"GE Partner" shall have the meaning set forth in the Recitals hereto.

"GE Rail" shall have the meaning set forth in the Recitals hereto.

"Governmental Authority" shall mean any United States federal, state or local, or any foreign, governmental, regulatory or administrative agency or authority.

"Guarantor" shall have the meaning set forth in the Recitals hereto.

"Guaranty" shall have the meaning set forth in the Recitals hereto.

"Holdback Amount" shall have the meaning specified in Section 12(d).

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Improvement Proceeds" shall mean and include (i) all Insurance Proceeds in respect of any Railcars subject to an Event of Loss and (ii) any and all Net Sale Proceeds realized from the sale of any Railcars, in each case, whether from an insurer, railroad, sublessee or any other source (determined without regard to any applicable deductibles) less reasonable out-of-pocket costs and expenses paid or incurred by the Lessee incident to an Event of Loss or to collecting any such amount (to the extent not previously deducted in determining Net Sale Proceeds or Insurance Proceeds). In the case of any Event of Loss, Improvement Proceeds shall be deemed to include an amount equal to the greater of (a) the Fair Market Value of the Railcar or Railcars subject to such Event of Loss and (b) the Insurance Proceeds relating to or arising from such Event of Loss (or which would have resulted from or arisen from such Event of Loss if the Railcars had been insured as provided in this Lease). In the case of any Railcar subject to self-insurance, the amount of the Lessee's self-insurance and

therefore the amount of the Improvement Proceeds shall be deemed to be the Fair Market Value of such Railcar. Notwithstanding the foregoing, any condemnation proceeds arising from any Event of Loss shall constitute Improvement Proceeds only up to an amount equal to the Fair Market Value of the Railcar subject to the Event of Loss, and Excess Condemnation Proceeds shall be payable to, and shall be the property of, the Lessor, but shall be subject to the Lessee's rights of setoff and withholding set forth in Section 12 hereof.

"Indemnification Payments" shall mean any amounts (including interest) which the Lessee is required to pay to any Person pursuant to Section 13 hereof.

"Indemnitee" shall have the meaning specified in Section 13(c).

"Indemnitor" shall have the meaning specified in Section 13(c).

"Indenture" means the Indenture, dated as of March 7, 1997, between the Lessor and The First National Bank of Chicago, as trustee, as amended from time to time.

"Insurance Proceeds" shall mean (i) all self-insurance amounts and (ii) all insurance proceeds, sale proceeds, AAR Depreciated Value amounts, condemnation or requisition payments and other sums paid or payable to the Lessee by parties other than the Lessee (or which would have been paid or payable had the Railcars been insured as provided in this Lease) in respect of any Railcar subject to an Event of Loss (including any Net Sale Proceeds received by the Lessee paid in connection with the sale or other disposition of such Railcar), but excluding amounts paid on account of insurance maintained by the Lessor or Affiliates of the Lessor, whether from an insurer, railroad, sublessee or other source (determined without regard to any applicable deductibles), less reasonable out-of-pocket expenses paid or incurred by the

Lessee incident to any Event of Loss or to collecting such Insurance Proceeds (to the extent not previously deducted in determining Net Sale Proceeds).

"Lease Agreement," "this Lease," "this Agreement," "herein," "hereunder," "hereof," "hereby," or other like words shall mean or refer to this Capital Lease Agreement, as this Lease Agreement shall have been originally executed or as modified, amended or supplemented from time to time.

"Lease Default Payments" shall have the meaning specified in Section 12(d) hereof.

"Lease-outs" shall mean the ACF Lease-outs and GE Lease-outs (each as defined in the Participation Agreement), including, without limitation, the subleases identified in Schedule B hereto (all of which Lease-outs are included in the Contributed Rights).

"Lessee" shall have the meaning set forth in the preamble hereto.

"Lessee Indemnification Payments" shall mean any Indemnification Payments or other payments in connection with any Transaction Document that the Lessee or any Affiliate thereof is required to pay to any ACF Contributor, any of its successors or permitted assigns, any Affiliate thereof (other than the Lessor) or any of their respective beneficiaries, trustees, partners, members, stockholders, officers, directors, employees, agents or representatives.

"Lessee Indemnatee" shall have the meaning specified in Section 12(b).

"Lessee Post-Closing Accounts Receivable" shall mean any accounts, notes or other receivables of the Lessee in respect of the Railcars, the Contributed Rights or the Contracts (or the pro rata portion thereof) and all rights, claims, credits, causes of action or rights of set-off arising therefrom relating to the period from and after the

Basic Term Commencement Date to the end of the Term of this Lease, together with any interest accrued thereon from the respective obligors, and any collateral therefor.

"Lessee Purchased Cars" shall have the meaning set forth in the Participation Agreement.

"Lessee Security Agreement" shall have the meaning set forth in the Recitals hereto.

"Lessor" shall have the meaning set forth in the preamble hereto.

"Lessor Indemnitee" shall have the meaning specified in Section 13(a).

"Lessor Liens" shall mean any Lien, other than a Permitted Lessor Lien, with respect to the Railcars, title thereto or any interest therein, the Contributed Rights or the Contracts, to the extent resulting from any action or inaction of the Lessor, any ACF Contributor or any Affiliate thereof from and after the Basic Term Commencement Date other than in accordance with the transactions contemplated by the Participation Agreement.

"Liens" shall refer to each and all of the following items: mortgages, claims, charges, security interests, liens, obligations, pledges, options, rights of first offer or refusal, encumbrances, imperfections of title or other matters affecting title, and any rights of third parties whatsoever.

"LLC Agreement" shall mean the Limited Liability Company Agreement of the Lessor dated as of March 7, 1997 by and among GE Member, the ACF Contributors and the Third-Party Member, as members, and the GE Partner and ACF, as managers, as amended from time to time.

"LLC Loan Documents" shall mean the (i) the Back-up Loan Agreement and the Back-up Loan Security Agreement, in each case dated as of the date hereof, between the Lessor and the Guarantor or an Affiliate thereof, providing for, among

other things, a third priority security interest in the Lessor's assets, subject to this Lease, the Master Lease and the TH Railcar Lease, together with any other documents relating thereto, and (ii) the ACF Loan Agreement and the ACF Loan Security Agreement in each case dated as of the date hereof between the Lessor and ACF, providing for, among other things, a fourth priority security interest in the Lessor's assets, subject to this Lease, the Master Lease and the TH Railcar Lease, together with any other documents relating thereto.

"Losses" shall mean any and all liabilities, obligations, losses, damages (including consequential damages), Environmental Costs (as defined in the Participation Agreement), Taxes (including Excluded Taxes), ACF Pension Liabilities, penalties, fines and assessments (whether criminal or civil), claims, actions, injuries, suits, judgments and reasonable costs, expenses and disbursements (including, but not limited to, reasonable legal fees and expenses and costs of investigation) and demands whatsoever, howsoever arising. Losses of the Lessee shall include, without limitation but without duplication, any Indemnification Payments made by the Lessee under Section 13 hereof and any loss, damage, liability or expense incurred by the Lessee resulting from or arising out of (i) any breach of any representation, warranty, covenant or agreement of the Lessor contained in any Transaction Document, except to the extent liability for any such Losses resulting from or arising out of such breach is allocated to the Lessee based on Comparative Fault, (ii) any breach of any representation, warranty, covenant or agreement of any ACF Contributor or any parent or subsidiary thereof contained in any Transaction Document, (iii) any acts or events occurring prior to the commencement of this Lease with respect to the Railcars or the Contributed Rights, (iv) any Lessor Lien or (v) any breach of the covenant of quiet enjoyment in Section 15.2(b) of this Lease, the TH

Railcar Lease or the Master Lease or the termination of this Lease, the TH Railcar Lease or the Master Lease or the Purchase Option hereunder or thereunder, in any case for any reason other than the termination of this Lease, the TH Railcar Lease and the Master Lease upon an Event of Default hereunder and thereunder.

"Master Lease" shall have the meaning set forth in the Recitals hereto.

"Net Sale Proceeds" shall mean all sums paid to the Lessee by a purchaser in respect of a sale or other disposition of a Railcar permitted by this Lease, less any reasonable out-of-pocket costs and expenses (including but not limited to costs arising out of the transportation and preparation for sale of such Railcar, and all sales and use taxes applicable to such sale or other disposition which could not reasonably be avoided) paid or incurred by the Lessee incident to such sale or other disposition.

"Nondisturbance and Attornment Agreement" shall mean the agreement, dated as of the date hereof, between the Lessee and the Trustee.

"Notes" shall mean the Class A-1 Notes and the Class A-2 Notes.

"Over-withheld Amount" shall have the meaning specified in Section 12(e) hereof.

"Participation Agreement" shall have the meaning set forth in the Recitals hereto.

"Partnership Agreement" shall mean the Agreement of Limited Partnership of the GE Member dated as of March 7, 1997 by and among the GE Partner and ACF, as amended from time to time.

"Past Due Rate" shall have the meaning set forth in Section 4.2 hereof.

"Permitted Lessor Liens" shall mean any Lien on or with respect to the Railcars, title thereto or any interest therein, the Contributed Rights or the Contracts, to the extent relating to (i) the respective rights and interests of the Lessee (including

without limitation those arising under the Lessee Security Agreement), the Lessor and the Trustee under the Transaction Documents and the Financing Documents (as defined in the Participation Agreement) and the respective rights and interests of secured parties under the LLC Loan Documents; (ii) Liens for Taxes either not yet due or being contested by the Lessor in good faith by appropriate proceedings, (iii) materialmen's, mechanics', vendors', workers', repairmen's or other like Liens arising in the ordinary course of business prior to the Basic Term Commencement Date, (iv) Liens arising out of judgments or awards against the Lessor with respect to which at the time an appeal or proceeding for review is being diligently prosecuted in good faith and there shall have been secured a stay of execution pending such appeal or proceeding for review, (v) Lease-outs, (vi) Liens to the extent resulting from any action or inaction of any GE Contributor or any Affiliate thereof, (vii) Liens with respect to which the related indebtedness has been paid in full or fully defeased prior to or at the Basic Term Commencement Date but the instrument evidencing such Lien has not been canceled or such Lien has otherwise not been removed as a Lien from title, if a receipt or other evidence of payment in full or defeasance in full reasonably satisfactory to the Lessee has been delivered by the Lessor or its Affiliates to the Lessee prior to or at the Basic Term Commencement Date, and (viii) any other Liens arising out of the use or lease of the Railcars by the Lessor or any Affiliate of the Lessor prior to the Basic Term Commencement Date in a manner consistent with such Person's conduct of business in the usual and ordinary course, so long as such Liens do not, with respect to the Lessee's estate, interests, rights and benefits hereunder, adversely and materially affect the value, insurability or marketability of the Railcars, materially interfere with the use of the Railcars in a railcar leasing business or adversely and materially affect the Contributed Rights or the Contracts.

"Permitted Liens" shall have the meaning set forth in Section 7(a) hereof.

"Person" shall mean an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, federal, state, local, foreign or provincial governmental authority or other entity of whatever nature.

"Present Value" shall mean the present value calculated using an annual discount rate equal to the lower of (i) the Prime Rate plus 150 basis points and (ii) 9%, in each case compounded quarterly.

"Prime Rate" shall be a per annum rate equal to the "prime rate" as in effect from time to time as set forth in The Wall Street Journal.

"Purchase Option" shall have the meaning specified in Section 16.1 hereof.

"Purchase Price" shall mean \$1.00, subject to set off and withholding solely as provided for in this Lease.

"Railcar" shall mean each of the railcars contributed (directly or indirectly through the GE Member, as the case may be) to the Lessor by the ACF Contributors or the GE Contributors, (a) including, without limitation, (i) the railcars specifically listed and described in Appendix A hereto as such Appendix A may be modified from time to time in accordance with the provisions of this Lease Agreement, (ii) any railcars substituted therefor or added thereto pursuant to the Participation Agreement, (iii) any Capital Improvements thereto which become the property of the Lessor pursuant to this Lease, (iv) any replacements or substitutions therefor in accordance with this Lease, (v) all parts, additions and other items installed thereon or incorporated therein and (vi) all other equipment that, in each case, becomes the property of the Lessor and is subjected to this Lease pursuant to any provision of this



Lease, but (b) excluding the Railcars (as defined in the TH Railcar Lease and the Master Lease).

"Rent" shall mean the quarterly rent installments payable pursuant to Section 4.1 hereof, as may be adjusted from time to time upon any acceleration or prepayment of rent, including, without limitation, the amounts referred to in Sections 14.1(b)(i) and (ii).

"Rent Interest" shall have the meaning set forth in Section 4.2 hereof.

"Rent Payment Date" shall mean January 15, April 15, July 15 and October 15 of each year during the Term, commencing with April 15, 1997.

"Rental Period" shall mean (i) the period from and including the Basic Term Commencement Date to but excluding the first Rent Payment Date, and (ii) each subsequent period throughout the Term from and including the immediately preceding Rent Payment Date to but excluding the next succeeding Rent Payment Date.

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessor or the Lessee contained in this Lease, a vice president or higher corporate officer of such Person or of a member of such Person who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

"Returned ACF Railcar" shall have the meaning set forth in the Participation Agreement.

"Returned ACF Railcar Cash Adjustment" shall have the meaning set forth in the Participation Agreement.

"Scrap Railcar" shall mean any Railcar which the Lessee has determined (without intentional discrimination), other than as a result of a Casualty, in accordance with the general guidelines and practices of the Lessee and its Affiliates with respect

to railcars whether owned or (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them and in compliance with Section 15 of this Lease, should not be repaired in light of its age, expected useful life and the cost of such repairs.

"Second Transition Agreement" shall mean the Transition Agreement, dated as of the date hereof, among the ACF Contributors, American Railcar Industries, Inc., a Missouri corporation, GE Rail and the Lessee, as amended from time to time.

"Shortfall" shall have the meaning specified in Section 16.1(b)(ii) hereof.

"Taxes" shall have the meaning specified in Section 13(d) hereof.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement, dated as of the date hereof, among the Lessee, the Guarantor, the Lessor and the ACF Contributors.

"Term" shall mean the Basic Term unless this Lease shall have sooner terminated pursuant to the terms hereof.

"Third-Party Member" shall have the meaning set forth in the Recitals hereto.

"Transaction Documents" shall mean the following agreements, in each case as amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof: this Capital Lease; the Master Lease; the TH Railcar Lease; the Guaranty; the Participation Agreement; the LLC Agreement; the Partnership Agreement; an ACF - GE Member Asset Contribution Agreement, dated as of the date hereof, by ACF in favor of the GE Member; a GE Contributors Asset Contribution Agreement, dated as of the date hereof, by the GE Contributors in favor of the GE Member; a GE Member Asset Contribution Agreement, dated as of the date hereof by the GE Member in favor of the LLC; an ACF Contributors - LLC Asset Contribution Agreement, dated as of the date hereof, by the ACF Contributors in favor of the

Lessor; an ACF - GE Member Liability Assumption Agreement dated as of the date hereof by the GE Member in favor of ACF; a GE Contributors Liability Assumption Agreement, dated as of the date hereof, by the GE Member in favor of the GE Contributors; a GE Member Liability Assumption Agreement dated as of the date hereof by the Lessor; an ACF Contributors - LLC Liability Assumption Agreement, dated as of the date hereof, by the Lessor in favor of the ACF Contributors; the Tax Indemnity Agreement; the ERISA Indemnity; the Lessee Security Agreement; the ACF Contributors Security Agreement, a Back-up Loan Agreement dated as of the date hereof between GECC and the Lessor; a Back-up Loan Security Agreement dated as of the date hereof between GECC and the Lessor; an ACF Loan Agreement dated as of the date hereof between ACF and the Lessor; and an ACF Loan Security Agreement dated as of the date hereof between ACF and the Lessor.

"Triggering Event" shall have the meaning set forth in Section 16.1(b).

"Trustee" shall mean The First National Bank of Chicago, as trustee, or any of its successors from time to time, under the Indenture.

## Section 2.

### NET LEASE; CAPITAL LEASE

2.1. This Lease is a net lease. Each of the Lessee's obligations to pay (i) all Rent, Rent Interest, Indemnification Payments (other than Lessee Indemnification Payments) and (ii) except as expressly provided in Section 12 or Section 16 hereof, Default Interest, Lessee Indemnification Payments and any other amounts payable hereunder, in each case, shall be absolute and unconditional. The Lessee shall not be entitled (and hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it by statute or otherwise) to any abatement or reduction of, or setoff against (I) Rent, Rent Interest and Indemnification Payments

(other than Lessee Indemnification Payments) and (II) except as expressly provided in Section 12 or Section 16 hereof, Default Interest, Lessee Indemnification Payments or any other amounts payable hereunder, in each case, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, any Affiliate of the Lessor, or any other Person, either under this Lease or otherwise. Except as otherwise expressly provided in Section 14 or Section 16 hereof, this Lease shall not terminate (and the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it by statute or otherwise, to terminate, cancel, quit or surrender this Lease), and the respective obligations of the Lessor and the Lessee shall not be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Railcars from whatever cause, including but not limited to any Liens or rights of others with respect to any of the Railcars, the prohibition of or other restriction against the Lessee's use of any or all of the Railcars, the interference with such use by any Person, any defect in the title to, compliance with plans or specifications for, condition, design, fitness for use, operation, damage or destruction of all or any of the Railcars, the invalidity or unenforceability of this Lease, the TH Railcar Lease or the Master Lease or the lack of due authority herefor or therefor, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee or the Lessor or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that (x) Rent, Rent Interest and Indemnification Payments (other than Lessee Indemnification Payments) and (y) except as expressly provided in Section 12 or Section 16 hereof, Default Interest, Lessee Indemnification Payments and any other amounts payable by the Lessee

hereunder, in each case, shall continue to be payable in all events in the manner and at the times herein provided. Each payment of Rent and Rent Interest made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any other Person, for any reason whatsoever. Notwithstanding any other provision of this Lease, the Lessee's unconditional obligation to pay Rent, Rent Interest and Indemnification Payments (other than Lessee Indemnification Payments) shall not be impaired or affected by any other provision of this Lease.

2.2. Capital Lease. The parties hereby agree that the Basic Term of this Lease exceeds 80% of the remaining economic useful life of each of the Railcars, and acknowledge their intent that this Lease be a capital lease and not a true lease, and that the transfer of the Railcars pursuant to this Lease be a sale, for tax purposes. The parties hereto agree that for tax purposes the purchase price for the Railcars is \$1.00 and the applicable discount rate is \_\_\_\_%. The Lessor will treat the Lessee as the owner of the Railcars and any Capital Improvements thereto for tax purposes and will not claim with respect thereto any income tax benefits available to an owner of the railcars or any Capital Improvements and neither the Lessor nor the Lessee (nor any of their Affiliates) will take any position with any tax authority or tax agency or take any position or make any statement on any report which is inconsistent with the foregoing. It is the intent of the parties that for the purpose of construing the rights and remedies of the parties hereunder this Lease shall be deemed to be a lease and not a security agreement.

### Section 3.

#### DELIVERY AND ACCEPTANCE OF RAILCARS

(a) On the Basic Term Commencement Date, the Lessor shall deliver to the Lessee all the Railcars (including the Contributed ACF Cars Acquisition Amount (as defined in the Participation Agreement), if any, for the acquisition by the Lessee of Lessee Purchased Cars, which upon acquisition thereof shall become Railcars, and including all cash contributed to the Lessor by the Third-Party Member, which cash shall be used by the Lessee for the acquisition of railcars, which upon acquisition thereof shall become Railcars, or to make Capital Improvements) in their locations on the Basic Term Commencement Date (together with Schedule C setting forth, to the best of the Lessor's knowledge, as of the most recent practicable date prior to the Basic Term Commencement Date, the location of each such Railcar not subject to a Lease-out or, if any Railcar is in transit, the destination thereof), and the Railcars (including those subject to Lease-outs) shall thereby be deemed to have been delivered to and accepted by the Lessee, whereupon such Railcars shall be subject to all of the terms and conditions of this Lease; provided that, in the case of any Railcars (including Lessee Purchased Cars acquired with the Contributed ACF Cars Acquisition Amount or Returned ACF Railcar Adjustment Amount, if any) contributed (directly or indirectly through the GE Member, as the case may be) to the Lessor pursuant to Section 2.5, 2.6, 2.8, 3.6 or 3.7 of the Participation Agreement, the Lessor shall be deemed to have delivered such Railcars to the Lessee on the Basic Term Commencement Date and shall deliver Schedule C to the Lessee with respect to such Railcars required by this Section 3(a); and provided, further, that, in the case of Lost Cars (as defined in the Participation Agreement), the Lessor shall also deliver to the Lessee cash in the amount of any ACF Cash Adjustment or GE Cash Adjustment (as defined in the Participation Agreement) provided for in the Participation Agreement, on the dates on or following the Basic Term Commencement Date that

such Railcars are specifically identified as having been contributed (directly or indirectly through the GE Member, as the case may be) to the Lessor pursuant to such Sections of the Participation Agreement. Notwithstanding anything herein to the contrary, no Returned ACF Railcars shall be deemed at any time to have been delivered to the Lessee or to be subject to this Lease.

(b) Effective on the Basic Term Commencement Date, the Lessee hereby assumes and agrees to perform the Assumed Obligations and the Lessor hereby assigns to the Lessee the Contributed Rights for the Term of this Lease. Following termination of this Lease, if the Purchase Option is not exercised, the Lessor, subject to Section 12, agrees to assume and perform (subject to Section 15.2(d)) any Assumed Obligations to the extent relating to periods following the termination of this Lease, and all obligations of the Lessee under End-User Leases and any other Contracts of the Lessee to the extent relating to the operation or use of the Railcars, to the extent such End-User Leases and other Contracts comply with the terms of this Lease and relate to periods following such termination. These obligations and agreements are in addition to, and not in lieu of, any other obligation or agreement of the Lessee or the Lessor under this Lease.

EXCEPT FOR THE SPECIFIC REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF THE LESSOR EXPRESSLY CONTAINED IN THIS AGREEMENT OR EXPRESSLY INCORPORATED BY REFERENCE HEREIN, THE RAILCARS ARE BEING LEASED ON AN "AS IS, WHERE IS" BASIS.

#### Section 4.

#### RENTALS

4.1. Rent. The Lessee agrees to pay to the Lessor, as rent for the Railcars, the Contributed Rights and all other property subject to this Lease, an initial rental payment of \$4,037,015.23 payable on April 15, 1997 and thereafter sixty-three (63) consecutive quarterly installments of Rent, each in the amount of \$4,037,015.23 and payable on a Rent Payment Date. No amount paid by the Lessee to any taxing authority with respect to any withholding shall constitute a payment of Rent hereunder.

4.2. Other Payment Obligations of the Lessee. In addition to its absolute and unconditional obligation to pay Rent, Rent Interest and Indemnification Payments (other than Lessee Indemnification Payments) hereunder, the Lessee, subject to its rights of setoff and withholding expressly set forth in Section 12 hereof, shall pay such other amounts to the Lessor (or any other Person entitled thereto) as provided herein. To the extent permitted by applicable law, the Lessee shall be required to pay, on demand (i) interest at an annual rate as of any date of calculation determined in accordance with Schedule G hereto on any part of any installment of Rent not paid when due (whether on the Rent Payment Date therefor, following acceleration thereof or, if the Purchase Option is exercised and closed pursuant to Section 16.1(b), at the closing thereof in the form of the Early Purchase Price), in each case for each day for which the same shall be overdue ("Rent Interest"), (ii) interest at a per annum rate (the "Past Due Rate") equal to the Prime Rate plus 300 basis points or, if less, the maximum rate permitted under applicable law on any Indemnification Payments not made when due, and (iii) interest ("Default Interest") at the Past Due Rate or, if less, the maximum rate permitted under applicable law on any payment (other than Rent,



Rent Interest or Indemnification Payments) not paid when due for each day for which the same shall be overdue until the same shall be paid. If the Lessor believes in good faith that any payment (other than Rent, Rent Interest or Indemnification Payments (other than Lessee Indemnification Payments)) is payable by the Lessee hereunder, the Lessor shall deliver a written demand for payment to the Lessee describing in reasonable detail the basis therefor. The Lessee shall have ten (10) days in good faith to dispute its obligation to make such payment or to assert any rights under Section 12. If the Lessee does not dispute its obligation to make such payment or so assert such rights, the Lessee shall be obligated, within two Business Days following the expiration of such ten-day period, to make such payment, together with interest at the Past Due Rate thereon from the earlier of (i) the date the Lessee shall have obtained knowledge of such obligation and (ii) the date of written demand therefor by the Lessor to but not including the date of receipt of payment. Otherwise, any such payment shall be made only after resolution of any dispute relating thereto or subject to the right of the Lessee to setoff and withholding (to the extent expressly set forth in Section 12), together with interest at the Past Due Rate on the amount of such payment determined to be payable, from and including the earlier of (i) the date the Lessee shall have obtained knowledge of such obligation and (ii) the date of written demand therefor by the Lessor to but not including the date of receipt of payment. Any payment of Rent Interest shall be due and payable simultaneously with the payment of Rent to which such Rent Interest relates.

4.3 Payments on Nonbusiness Days. If any payment date referred to in Section 4.1 or 4.2 is not a Business Day, the rental payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such payment date.

4.4 Place of Rent and Other Payments. Each installment of Rent, all Rent Interest, all Indemnification Payments (other than Lessee Indemnification Payments) and other amounts payable to the Lessor shall be paid to the Lessor in care of the Administrative Manager (as defined in the LLC Agreement) in accordance with, or as otherwise provided in, Section 4.5. All Indemnification Payments payable to any Person other than the Lessor shall be paid to the Person entitled thereto at such address as such Person shall have provided to the Lessee in writing.

4.5 Payment in Immediately Available Funds; Calculations. The Lessee agrees to make each payment provided for under the first sentence of Section 4.4 in immediately available funds at or prior to 10:00 a.m. (Chicago time) as follows: (i) so long as the Notes are outstanding and undefeased, each payment of Rent, Rent Interest and Indemnification Payments (other than Lessee Indemnification Payments) shall be paid to the Payment Account (as defined in the Indenture) or such other account as may be specified pursuant to the Indenture; and (ii) with respect to each other such payment (including, without limitation, each payment of Rent, Rent Interest and Indemnification Payments after the Notes are paid or defeased in full), to such account of the Lessor as may be specified by the Lessor in writing at least five (5) Business Days prior to the date on which a payment is due, and, in the absence of any such written instructions from the Lessor, the Lessee shall deliver payment to the Lessor by delivery to the Administrative Manager at its address set forth in Section 18 hereof or at such other place in the United States of America as the Lessor may designate to the Lessee in writing. At the time of any payment made by wire transfer hereunder, the Lessee shall provide notice to the Lessor and, if applicable, the Trustee by facsimile or telephone of the federal wire number of such payment. All interest, fees and other

amounts provided for under this Lease shall be computed on the basis of a 360-day year of twelve 30-day months (including the first day but excluding the last day).

## Section 5.

### TERM OF LEASE

5.1 Basic Term. The "Basic Term" shall commence on the Basic Term Commencement Date and shall terminate on the sixteenth anniversary thereof; provided that this Lease may be terminated prior to the expiration of the Basic Term as provided in Section 14 or Section 16. Notwithstanding anything contained in the preceding sentence to the contrary, the obligations of the Lessee and the Lessor pursuant to Sections 7, 8, 9.2, 12, 13, 14, 15.2(d) and 16 with respect to periods prior to the expiration or termination of this Lease and, to the extent expressly provided in any such Section, with respect to periods following the expiration or termination of this Lease, shall survive the expiration or termination of this Lease and continue in full force and effect until the same shall have been fully performed by the relevant party.

5.2 Mileage Credits. If the Lessee does not exercise the Purchase Option and if at any time or from time to time after the end of the Term of this Lease sublessees under End-User Leases withhold or claim amounts as offsets to rent or other payment obligations thereunder, in any case in respect of mileage credits earned thereunder with respect to any periods after the end of the Term of this Lease, then upon the written request of the Lessor or the ACF Contributors or the GE Contributors, as the case may be, if the Lessor is no longer in existence (accompanied by reasonable documentation supporting the amounts claimed by such sublessees) and subject to the Second Transition Agreement, the Lessee shall pay to the Lessor or the ACF Contributors or the GE Contributors, as the case may be, such amounts, but only

to the extent of any remaining mileage credits earned by the Railcars with respect to the period from and after the Basic Term Commencement Date to the end of the Term of this Lease. The Lessee shall have ten (10) days after receiving any such request to dispute its obligation to pay any amount specified in such request. If the Lessee does not dispute its obligation to pay such amount, the Lessee shall pay such amount, together with interest thereon at the Past Due Rate thereon from the date such written request was received to but not including the date such payment is received. Any disputed amounts shall be paid only after resolution of such dispute, together with interest thereon at the Past Due Rate from the date such written request was received to but not including the date such payment is received. Notwithstanding the foregoing, the Lessee shall not be required to make payments with respect to mileage credits hereunder if and to the extent the Lessor or the ACF Contributors or the GE Contributors, as the case may be, shall have compromised the rights of the Lessee against the applicable sublessee in respect of such mileage credits.

5.3. Application of Collateral; Guarantees. Unless the Lessee has exercised the Purchase Option, any security deposit, collateral or security agreement, or guarantee of any Person, (collectively, "Collateral") securing the obligations of any Person to pay any Lessee Post-Closing Account Receivable shall be conveyed to the Lessor at the end of the Term of this Lease, and the Lessee shall transfer and assign to the Lessor its rights to such Collateral.

## Section 6.

### IDENTIFICATION MARKS

The Railcars may be lettered with the names or initials or other insignia customarily used by the Lessee or its sublessees or, subject to the Administrative Service Agreement, the ACF Contributors or their sublessees, and the Lessee shall

have an unrestricted right to use, maintain, sublease or otherwise take actions or fail to act with respect to the Railcars in all respects regarding such identification marks on such terms and in such manner as it determines in its sole discretion, subject only to (i) the rights of parties to the End-User Leases and (ii) the Lessee's obligations under this Lease and the other Transaction Documents.

## Section 7.

### RESTRICTION ON LIENS; PRIORITY OF LEASE

(a) The Lessee will not directly or indirectly create, incur, assume or suffer to exist, and will as promptly as reasonably practicable discharge at its expense, any Lien on or with respect to the Railcars, title thereto or any interest therein, the Contributed Rights, the Contracts or this Lease except the following (herein referred to as "Permitted Liens"): (i) Liens for Taxes either not yet due or being contested by the Lessee in good faith by appropriate proceedings and for which the Lessee has provided adequate reserves in accordance with generally accepted accounting principles ("GAAP"), (ii) materialmen's, mechanics', vendors', workmen's, repairmen's or other like Liens arising in the ordinary course of business, (iii) Liens arising out of judgments or awards against the Lessee with respect to which at the time an appeal or proceeding for review is being diligently prosecuted in good faith and there shall have been secured a stay of execution pending such appeal or proceeding for review, (iv) End-User Leases, (v) Lessor Liens and Permitted Lessor Liens and (vi) any other Liens arising out of the Lessee's use of the Railcars in a manner substantially equivalent (without intentional discrimination) to the Lessee's and its Affiliates' practice from time to time for similar equipment whether owned or (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them, so long as such Liens do not adversely and materially affect the value,

insurability or marketability of the Railcars, materially interfere with the use of the Railcars in a railcar leasing business or materially and adversely affect the rights or interests of any of Lessor and the ACF Contributors in the Railcars, the Contributed Rights or the Contracts. The obligations of the Lessee under this Section 7(a) to discharge all Liens other than Permitted Liens, in any case arising during periods prior to the expiration or termination of this Lease, shall survive the expiration or termination of this Lease.

(b) This Lease and all right, title and interest of the Lessee hereunder shall be superior to the Indenture and all right, title and interest of the Trustee, the holders of the Notes or any other Person thereunder, as well as all right, title and interest of any Person in connection with any refinancing of the Notes at any time, and no Person may terminate this Lease or otherwise interfere with the Lessee's quiet enjoyment hereunder except as provided herein upon an Event of Default hereunder. Without limiting the generality of the foregoing, the Nondisturbance and Attornment Agreement sets forth certain rights and obligations of the Lessee and the Trustee in connection with this Lease and the Indenture.

## Section 8.

### EVENT OF LOSS; INSURANCE

8.1. Event of Loss. (a) Following the occurrence of any Event of Loss with respect to any Railcar or Railcars, the Lessee shall, in the manner and at the times provided in Section 11.3, apply all Improvement Proceeds relating to such Event of Loss as provided in Section 11.3. The Lessee shall be entitled to receive and retain such Improvement Proceeds to be applied by the Lessee as provided herein. If the Lessor shall receive any Improvement Proceeds in respect of any Railcars suffering an Event of Loss, the Lessor (subject to Section 12 hereof) shall promptly pay the entire

amount of such proceeds to the Lessee. In receiving and applying Improvement Proceeds, the Lessee shall act as agent for the Lessor and such Improvement Proceeds shall remain the property of the Lessor; provided, however, if the Lessee shall have exercised the Purchase Option, all unapplied Improvement Proceeds shall be paid over to, or retained by, the Lessee upon the closing of the Purchase Option.

(b) In the event of the requisition (other than a requisition which constitutes an Event of Loss) for use by any Governmental Authority of any Railcar during the Term of this Lease, all of the Lessee's obligations (including, without limitation, the obligation to pay Rent) under this Lease with respect to such Railcar shall continue to the same extent as if such requisition had not occurred, except that if such Railcar is returned by any Governmental Authority to the Lessee at any time after the end of the Term of this Lease and the Lessee shall not have exercised the Purchase Option hereunder, the Lessee shall be obligated to return such Railcar to the Lessor in accordance with the provisions of this Lease promptly upon such return by such Governmental Authority rather than at the end of the Term of this Lease, but the Lessee shall in all other respects comply with the return provisions of this Lease with respect to such Railcar. All payments received by the Lessor or the Lessee from any Governmental Authority for the use of such Railcar in respect of the Term of this Lease shall be paid over to, or retained by, the Lessee; and all payments received by the Lessor or the Lessee from any Governmental Authority for the use of such Railcar in respect of the period after the Term of this Lease shall be paid over to, or retained by, the Lessor; provided, however, that if the Lessee shall have exercised the Purchase Option, all such payments shall be paid over to, or retained by, the Lessee upon the closing of the Purchase Option.

(c) The Lessee is hereby granted full power and authority as agent for the Lessor to sell any Railcar which has suffered an Event of Loss and the Lessor hereby agrees to execute all necessary powers of attorney and other documents evidencing such power and authority; provided that each such sale shall be subject to the applicable provisions of Sections 11.2, 11.3(b) and 15.2(a).

8.2. No Release or Abatement. The Lessee shall not be released from its obligations hereunder (and there shall be no abatement, adjustment or reduction of Rent or Rent Interest payable hereunder) in the event of, and (with respect to any period during which the Lessee is obligated to carry insurance pursuant to Section 8.3) the Lessee shall bear the risk of, any Event of Loss to any Railcar from and after delivery and acceptance thereof by the Lessee hereunder; provided, however, that such allocation of risk shall not limit the Lessee's setoff and withholding rights pursuant to Section 12 that may be applicable to such Loss.

8.3. Insurance to be Maintained. (a) The Lessee will at all times from and after the Basic Term Commencement Date until (i) the date on which the Lessee has returned the Railcars in accordance with Section 14.5 following the termination of this Lease or (ii) if the Lessee has exercised the Purchase Option, the later of the (x) expiration of the Term of this Lease following such purchase and the payment of all amounts due to Lessor hereunder or (y) the return of the Railcars in accordance with the terms hereof, and at the Lessee's own expense, cause to be carried and maintained with such insurers with which the Lessee and its Affiliates insure equipment owned or (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them, public liability and property insurance in respect of the Railcars, in amounts and against such risks and with such deductible amounts as are substantially equivalent (without intentional discrimination)



to that maintained from time to time by the Lessee and its Affiliates for similar equipment whether then owned or (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them; provided, however, that the Lessee may maintain self-insurance in such amounts and against such risks as are substantially equivalent (without intentional discrimination) to that maintained or required to be maintained from time to time by the Lessee and its Affiliates with respect to other similar equipment whether then owned or (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them. So long as no Event of Default shall have occurred and be continuing, the proceeds of any property insurance shall be payable to the Lessee and the Lessee shall be entitled to retain such proceeds, subject to the terms of this Lease. The proceeds of public liability insurance shall be payable to the Person entitled thereto.

(b) The Lessee shall use commercially reasonable efforts to cause all insurance policies required to be maintained by the Lessee pursuant to this Section 8.3 to contain (i) an agreement by the insurer eliminating any rights of subrogation of the insurer against the Lessor, the Third-Party Member and their respective directors, stockholders and employees, and (ii) a waiver of any rights of the insurer to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of liability of the Lessor, the Third-Party Member and their respective directors, stockholders and employees.

(c) The Lessee shall provide the Lessor such documents as the Lessor may reasonably request from time to time to evidence the maintenance of the insurance required under this Section 8.3. Nothing herein shall be construed to prohibit the Lessor or any other Person from carrying any insurance on the Railcars for its own benefit; provided, however, that any such insurance shall not require any premiums to

be paid by the Lessee nor shall any such insurance require the Lessee to carry additional insurance not specifically required of the Lessee herein. No insurance maintained by the Lessee hereunder shall require contribution from any insurance maintained by the Lessor or any of its Affiliates.

8.4. Survival. The obligations of the Lessee under paragraphs (a) and (b) of Section 8.1 shall survive the expiration or termination of this Lease.

## Section 9.

### REPORTS; BOOKS AND RECORDS

9.1. Reports. (a) The Lessee agrees, at the Lessee's expense, (i) to prepare and deliver to the Lessor within a reasonable time prior to the filing date (or, to the extent permissible, to file on behalf of the Lessor) any and all reports (other than reports required to be filed by the Lessor or any of its Affiliates with the Securities and Exchange Commission or any successor agency and income or franchise tax returns required to be filed by the Lessor or its Affiliates) to be filed with or provided by the Lessor or its Affiliates to any federal, state or other regulatory or taxing authority by reason of the ownership by the Lessor of the Railcars or the leasing thereof to the Lessee, except as otherwise provided in the First Transition Agreement, and (ii) in the case of income or franchise tax returns and filings with the Securities and Exchange Commission, to prepare and deliver to the Lessor, within 25 days after the end of each calendar quarter (except as provided in paragraph (c) of this Section 9.1), all such information as is reasonably requested by the Lessor for preparation of such reports and returns, including but not limited to the information set forth on Schedule D (it being understood that the preparation and filing of such reports and tax returns shall be the sole responsibility of the Lessor). The Lessee hereby acknowledges that the Lessor and other Lessor Indemnitees will rely on such

information and the information set forth in paragraph (c) of this Section 9.1 in filing tax returns and making other reports and filings and in furtherance of such reliance the Lessee shall be responsible for (x) the accuracy of such information and (y) pursuant to Section 13 hereof, for any tax penalties or additions to tax or other Losses imposed on or incurred by any such Persons proximately resulting from the use of such information in such tax returns or other reports or filings (whether or not such tax penalties, additions to tax or other Losses relate to Excluded Taxes); it being understood, however, that certain information provided or included in reports by the Lessee under Section 9.1(c) will be based on estimates and that certain of such information may subsequently be revised to reflect additional information (such as information with respect to Events of Loss) received after the date of delivery of such information or reports, and that, with respect to such estimates, the Lessee shall be responsible for tax penalties incurred by any Lessor Indemnitee in reliance on such estimates; provided that all such information and reports shall become final by June 15 of the year in which such information or reports are furnished by the Lessee and the Lessee shall be fully responsible for the accuracy of such final information or reports as provided in this paragraph. Notwithstanding the foregoing, the Lessee shall not be responsible for the accuracy of information provided by it or, pursuant to Section 13 hereof, for any tax penalties or additions to tax or other Losses resulting from use of such information to the extent that such information was provided by or based on information to the GE Contributors or the Lessor by the ACF Contributors under the Participation Agreement.

(b) On or before March 15 in each year, commencing with 1998, the Lessee will furnish to the Lessor a certificate of a Responsible Officer of the Lessee setting forth as at the preceding December 31 the amount, description and reporting marks of

all Railcars then leased hereunder, the amount, description and numbers of all Railcars that have suffered an Event of Loss during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the Railcars as the Lessor may reasonably request.

(c) The Lessee shall, at the Lessee's expense, within 90 days after the end of each taxable year of the Lessor, deliver to the Lessor such reports with respect to tax depreciation of the Railcars (and related information) as the Lessor may reasonably request.

9.2 Books and Records. (a) On the Basic Term Commencement Date, subject to the First Transition Agreement, the Lessor shall deliver to the Lessee copies of all books, records and other data with respect to the Railcars and the Contributed Rights received by the Lessor from the ACF Contributors and the GE Contributors (the "Lessor's Books and Records"), to be held and used by the Lessee as provided in this Lease. The Lessor's Books and Records shall at all times remain the property of the Lessor, and the Lessee shall protect, preserve and maintain the Lessor's Books and Records until the Lessor's Books and Records are returned to the Lessor as provided in Section 14.5 (unless the Lessee exercises the Purchase Option, in which case the Lessor's Books and Records shall be conveyed to the Lessee together with the Railcars and the Contributed Rights).

(b) At all times during the Term of this Lease, the Lessee shall maintain full, complete and accurate books and records regarding the Railcars, the End-User Leases and the business of the Lessee conducted with the Railcars (the "Lessee's Books and Records") substantially equivalent (without intentional discrimination) to the books and records maintained by the Lessee and its Affiliates with respect to

railcars owned and (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them. The Lessee shall provide to the Lessor, any of its members or any Affiliate thereof from time to time such information relating to the Railcars, the Contributed Rights and the Contracts as shall be required to be furnished by the Lessor to any such Person under any Transaction Document or Financing Document, and the Lessor may, upon reasonable request, at reasonable times and at the ACF Contributors' expense, but no more often than once in each 12-month period, examine the Lessor's Books and Records and the Lessee's Books and Records for compliance by the Lessee with the provisions of this Lease; provided, however, that unless and until the expiration of the Purchase Option, (i) the Lessee shall not be required without its consent (which may not be unreasonably withheld) to disclose to any Person (other than as provided in clause (ii) below) the terms and conditions of End-User Leases or other proprietary information as to the Lessee's business, (ii) each such examination shall be performed only by a nationally recognized independent accounting firm reasonably acceptable to the Lessee that shall have agreed not to disclose to any Person the terms and conditions of End-User Leases or other proprietary information as to the Lessee's business (except and to the extent that such information is required to be disclosed in such accounting firm's report to the Lessor, any of its members or any Affiliate thereof with respect to any non-compliance by the Lessee with the terms and conditions of this Lease), in each case without the Lessee's consent (which may not be unreasonably withheld), and (iii) in the course of such examination, none of such Lessor's Books and Records, Lessee's Books and Records nor any copies, abstracts, redactions or summaries thereof or of the terms and conditions of End-User Leases or of other proprietary information as to the Lessee's business may be removed from the Lessee's premises (except and to the

extent that copies, abstracts, redactions or summaries of such information are required to be removed from the Lessee's premises to enable the preparation of the report of such examination to the Lessor, any of the Lessor's members or any Affiliate thereof with respect to any non-compliance by the Lessee with the terms and conditions of this Lease) or otherwise disclosed to any Person without the Lessee's consent (which may not be unreasonably withheld); and provided, further, that any withholding by the Lessee of its consent shall be deemed reasonable in any case under the foregoing clauses (i), (ii) and (iii) where there is the potential of disclosure of the terms and conditions of End-User Leases or other proprietary information as to the Lessee's business to any Person other than the Lessor, any of its members or any Affiliate thereof that (x) is a sublessee under any End-User Lease or (y) together with its Affiliates, derives annual revenues in excess of \$30 million as an operating lessor of railcars.

(c) Unless the Lessee shall have delivered the Lessor's Books and Records to the Lessor pursuant to Section 14.5(b) or otherwise, for a period ending six years following the Term of this Lease, or so long as any pending claim against the Lessee under this Lease has not been Finally Determined, the Lessee shall not destroy or permit the destruction of any of the Lessor's Books and Records or the Lessee's Books and Records without first giving the Lessor notice in writing and a reasonable opportunity to make copies of such Books and Records; provided, however, that if the Lessee has exercised the Purchase Option and paid the Purchase Price or the Early Purchase Price, as the case may be, none of such Lessor's Books and Records, Lessee's Books and Records nor any copies, abstracts, redactions or summaries thereof or of the terms and conditions of End-User Leases or of other proprietary information as to the Lessee's business may thereafter be removed from the Lessee's

premises or otherwise disclosed to any Person without the Lessee's consent (which may not be unreasonably withheld, subject to the last proviso in paragraph (b) above).

(d) The obligations of the Lessee under this Section 9.2 shall survive the expiration or termination of the Lease.

## Section 10.

### APPOINTMENT OF LESSEE AS AGENT; COMPLIANCE WITH LAWS

10.1. Appointment of Lessee as Agent. (a) The Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the Term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the manufacturer of each Railcar or any component thereof whether under warranty, product liability claim or otherwise, during the Term of this Lease; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights.

(b) Neither the Lessor nor any of its Affiliates shall have any responsibility or liability under this Lease to the Lessee or any other Person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Railcars or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Railcars or any risks relating thereto during the Term of this Lease; (iii) any interruption of service, loss of business or anticipated profits or consequential damages during the Term of this Lease; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Railcars during the Term of this Lease; provided, however, that none of the foregoing

shall limit any of the Lessee's rights or any of the Lessor's or its Affiliates' obligations or liabilities arising out of, resulting from or relating to any breach of the Lessor's representations, warranties, covenants and agreements (A) herein (including, without limitation, the representations, warranties, covenants and agreements incorporated by reference in Section 12) or (B) under any of the other Transaction Documents, subject to the applicable limitations on liability and provisions for the allocation of Losses set forth in Sections 12 and 13 and in the Participation Agreement. Subject to Section 12, the Lessor covenants that (1) during the Term of this Lease, the Lessor shall not create, suffer or permit any Lessor Liens on the Railcars, the Contributed Rights or the Contracts, other than those created by Lessee, and (2) should any Lessor Liens arise during the Term of this Lease, the Lessor shall promptly discharge all Lessor Liens. If the Lessor does not discharge a Lessor Lien, the Lessee may, at its option, take action, including the payment of money, necessary to discharge such Lessor Lien and, in such event, the Lessee shall have the right to set off such payment to the extent (and only to the extent) set forth in Section 12.

10.2. Compliance with Laws. The Lessee agrees at all times during the Term of this Lease to comply in all material respects with all applicable laws of the jurisdictions in which operations involving the Railcars extend, with the interchange, car hire, car service, and other applicable rules of the AAR, and with all applicable rules of the United States Department of Transportation, the Surface Transportation Board and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Railcars, to the extent that such laws and rules affect the title, operation, condition or use of the Railcars (all such laws and rules to such extent being hereinafter called the "Applicable Laws"), and in the event that, prior to the expiration of the Term of this Lease, any Applicable Law requires any



alteration, replacement, addition or modification of or to any part on any Railcar, the Lessee will conform therewith at its own expense (subject to Sections 11.3 and 12 hereof), except to the extent that any failure to conform therewith would not, together with all other such failures, in the aggregate result in a material adverse effect on the Lessor or the Railcars); provided, however, that the Lessee may at its own expense contest the validity or application of any Applicable Law in any manner which does not adversely affect the property or rights of the Lessor under this Lease; and provided, further, that the sole remedies of the Lessor for any breach of this provision shall be the rights of the Lessor under Section 21 hereof and its right to sue for damages or specific performance under Section 14 hereof.

#### Section 11.

##### CAPITAL IMPROVEMENTS; SUBSTITUTIONS

11.1. Capital Improvements. (a) The Lessee, at its own cost and expense, may from time to time make Capital Improvements to the Railcars during the term of this Lease; provided that such Capital Improvements are made in compliance with all of the terms and conditions of this Lease, including, without limitation, Section 15.2 (a), do not render the Railcars ineligible for interchange service under the rules of the AAR, and do not cause any Railcars to become or constitute "limited use property" as defined in Rev. Proc. 76-30, 1976-2 C.B. 647 (or any successor thereto), as in effect on the dates of the commencement and completion of such Capital Improvements ("Limited Use Property"). The Capital Improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent provided in Section 11.1(b) hereof.

(b) Any and all Capital Improvements made to any Railcar (i) which are not readily removable without causing material damage to such Railcar, (ii) which were

made as a result of the occurrence of an Event of Loss with respect to any other Railcar or Railcars, (iii) which were required to be made pursuant to Applicable Law, (iv) the cost of which is reimbursed to the Lessee in accordance with Section 11.3 hereof, (v) which constitute replacements for any part or element of such Railcar, or (vi) which were made to any Railcar in the course of ordinary maintenance of such Railcar shall constitute accessions to such Railcar when made and full ownership thereof and title thereto free from any Lien (except for Lessor Liens and Permitted Liens) shall immediately be vested in the Lessor. Any Capital Improvements owned by the Lessee may be removed by the Lessee (at the Lessee's expense) upon or prior to the expiration of the Term hereof, if such removal will not constitute a breach or violation of any of the End-User Leases or any applicable Lien, or cause any of the Railcars when thereafter used to be in violation of any Applicable Law. Upon the expiration of the Term of this Lease (unless the Lessee has exercised the Purchase Option), full ownership and title to any Capital Improvements owned by the Lessee and not removed by the Lessee prior to the expiration of the Term hereof shall immediately vest in the Lessor.

11.2. Additional Railcars; Substitutions. (a) In the event the Lessee causes to be transferred to the Lessor other railcars in addition to or in substitution for any of the Railcars subject hereto pursuant to the occurrence of an Event of Loss or otherwise as provided in this Lease (either by acquisition from third parties or, with the consent of the Lessor (which consent will not be unreasonably withheld in any case and will not be required for substitutions replacing Scrap Railcars), the Lessee's and its Affiliates' fleet), such other railcars shall be included as part of the Railcars by supplement hereto and shall be subject to all the terms and conditions hereof in all respects as though such railcars had been part of the Railcars herein specifically described. Upon

any such transfer of railcars by the Lessee to the Lessor, title to such railcars shall be conveyed to the Lessor, free and clear of all Liens other than Lessor Liens and Permitted Liens.

(b) In the event an additional railcar or railcars are substituted for any Railcar or Railcars subject to the Event of Loss, the Lessor, subject to Section 12, shall assign and convey to the Lessee its interest in such Railcar or Railcars subject to the Event of Loss and the Lessor, subject to Section 12, shall execute and deliver to the Lessee, or the Lessee's assignee or nominee, a bill of conveyance for such Railcars such as will transfer to the Lessee or such assignee or nominee title to such Railcars. Except as otherwise provided herein, the Lessee shall have the right to sell any Railcar; provided that (i) the Lessee substitutes railcars of the same type and having equivalent Fair Market Value, (ii) the decisions with respect to such sale are substantially equivalent (without intentional discrimination) to the Lessee's and its Affiliates' business practices with respect to railcars owned and (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them, and (iii) the Lessor shall have given its consent (which shall not unreasonably be withheld) in each case of any sale of a Railcar to the Lessee or any of its Affiliates or any sale and leaseback of a Railcar in which the Lessee or any of its Affiliates is the lessee thereof.

11.3. Improvement Proceeds. (a) The Lessee shall be entitled to receive and retain as agent for the Lessor all Improvement Proceeds, to be held and applied by the Lessee as provided in this Section 11.3.

(b) The Lessee shall be required to apply Improvement Proceeds (1) for the purpose of making Capital Improvements to the Railcars during the Term of this Lease in a manner and at such times as is substantially equivalent (without intentional

discrimination) to the Lessee's and its Affiliates' practice with respect to similar equipment owned and (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them or for the purpose of acquiring and/or transferring to the Lessor any railcars in addition to or in substitution for any of the Railcars, (2) to reimburse the Lessee for theretofore unreimbursed costs and expenses incurred by the Lessee in connection with the making of any Capital Improvements to the Railcars; provided, however, that (A) Improvement Proceeds arising from the disposition of any Scrap Railcar or from any Casualty may be used under this clause (2) solely to reimburse the Lessee for Capital Improvements made following the occurrence of such Casualty or disposition of such Scrap Railcar, and (B) except as permitted by the preceding clause (A), Improvement Proceeds arising with respect to any Railcar may be used under this clause (2) only to reimburse the Lessee to the extent that the Improvement Proceeds actually received exceeds the cost of any Capital Improvements to such Railcar required or permitted to be made hereunder, or (3) to reimburse the Lessee for the excess, if any, of (A) the Fair Market Value at the time of transfer of any railcars transferred to the Lessor in addition to or in substitution for any of the Railcars, over (B) the Fair Market Value at the time of transfer of the Railcars removed from this Lease by reason of such substitution (or in the case of any Event of Loss relating to such Improvement Proceeds, the Fair Market Value of such Railcars immediately prior to such Event of Loss giving rise to the Improvement Proceeds relating to the Railcars removed from this Lease by reason of such substitution).

(c) All Improvement Proceeds shall, subject to paragraph (b) above, be expended for (i) Capital Improvements to Railcars not affected by an Event of Loss and/or (ii) substitute or additional railcars (either by acquisition from third parties or

with the consent of the Lessor (which will not be unreasonably withheld in any case and will not be required for substitutions replacing Scrap Railcars) from the fleets of the Lessee or the Lessee's Affiliates at a price, in any case, not in excess of the Fair Market Value thereof) which shall become the property of the Lessor and shall become Railcars subject to this Lease. All Capital Improvements made with any Improvement Proceeds to Railcars not affected by an Event of Loss shall have a remaining useful life at the time they become subject to this Lease at least equal to the remaining useful life of the Railcars to which such Capital Improvements were made; provided that Improvement Proceeds may be used to make Capital Improvements required by Applicable Law or required to preserve the economic viability or structural integrity of any Railcar (such as Railcar linings), which by their nature may not have a useful life equal to the remaining useful life of the Railcars to which such Capital Improvements are made. All substitute Railcars acquired with any Improvement Proceeds shall have a remaining useful life at the time they become subject to this Lease equal to the remaining useful life of the Railcars for which such substitute Railcars were substituted.

(d) Any Improvement Proceeds shall be fully expended in accordance with this Lease by the last day of the second full quarter following the quarter in which such Improvement Proceeds are received by the Lessee.

(e) Notwithstanding any other provision of this Lease, the Lessee may make Capital Improvements to Railcars prior to obtaining any AAR approvals required therefor; provided that the Lessee shall make any further Capital Improvements to such Railcars required by the AAR as a condition to receipt of AAR approval.

(f) The Lessee shall be entitled to retain, to the extent it recovers from the lessees under End-User Leases, any expenses incurred by the Lessee for Capital Improvements not reimbursed by indemnification or insurance.

(g) Subject to Section 12 hereof, all Improvement Proceeds received by the Lessor shall be promptly remitted to the Lessee to be applied by the Lessee in accordance with the provisions of this Section 11.3. The Lessee shall update Schedule A from time to time, but in no event less than once per calendar year, to reflect any changes thereto pursuant to this Section 11.

(h) Any Capital Improvement made pursuant to this Lease and any substitute or additional Railcars conveyed to the Lessor hereunder constitute investments of Improvement Proceeds and shall not be treated as rental payments.

## Section 12.

### LESSOR REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION; SET-OFF

(a) The Lessor hereby agrees that, solely for purposes of this Section 12 and Section 13(c), all representations, warranties, covenants and agreements made to the Lessor, the Lessee or any of their Affiliates (other than the ACF Contributors and any parent or subsidiary thereof) by any of the ACF Contributors or any parent or subsidiary thereof (collectively, "Undertakings") under the Transaction Documents are hereby incorporated by reference to the same extent (including, without limitation, as limited by any expiration of any representation, warranty, covenant or agreement, or any "threshold" or limitation on recovery, therein provided) as if such Undertakings were specifically set forth in full herein, and such Undertakings shall be deemed to be made by the Lessor to the Lessee on the date hereof and may be relied upon by the Lessee; provided, however, that such Undertakings may be enforced by the Lessee

against the Lessor solely in the manner and to the extent set forth in this Section 12 or in the Lessee Security Agreement. To the extent the Lessor shall be entitled to assert any claims for indemnification against any of the ACF Contributors or any parent or subsidiary thereof for any matter arising out of or relating to the Transaction Documents, the Lessor agrees that, to the extent that the Lessee has indemnified the Lessor therefor, the rights of the Lessor against the ACF Contributors and any parent or subsidiary thereof shall be subordinated, to the fullest extent permitted by law, to any claims for indemnification of the Lessee, any of its Affiliates or any of their respective beneficiaries, trustees, partners, members, stockholders, officers, directors, employees, agents or representatives against any of the ACF Contributors or any parent or any subsidiary thereof.

(b) Solely in the manner and to the extent provided in this Section 12 and Section 13(c), the Lessor shall indemnify and hold harmless the Lessee from and against all Losses suffered or incurred by the Lessee, any Affiliate thereof or any of their respective beneficiaries, trustees, partners (other than ACF or any Affiliate thereof other than the GE Member), members, stockholders, officers, directors, employees, agents and representatives (each a "Lessee Indemnitee"): (i) to the extent arising out of, resulting from or relating to any breach of any of the Undertakings expressly made by the Lessor to the Lessee hereunder; (ii) to the extent arising out of, resulting from or relating to any failure by the Lessor or any Affiliate thereof to perform any of its covenants or agreements contained in any Transaction Document; (iii) (x) in any case that constitute a Loss relating to the Railcars included in the Contributed ACF Assets (as defined in the Participation Agreement) or the Contributed Rights with respect thereto that, but for notice thereof or claim with respect thereto, had occurred and existed on or prior to the Basic Term

Commencement Date, (y) in any case to the extent of the liability for any such Loss that is allocated to any ACF Contributor or any Affiliate thereof based upon Comparative Fault or (z) if the Purchase Option is not exercised, in any case that constitute a Loss (other than a Loss resulting from the gross negligence or willful misconduct of the Lessee) relating to the Railcars included in the Contributed ACF Assets or the Contributed Rights with respect thereto to the extent arising out of, resulting from or relating to any act, omission, event or state of facts occurring or existing after the expiration of the Term of this Lease; or (iv) except to the extent set forth in the last sentence of Section 9.1(a) hereof, in any case to the extent arising out of, resulting from or relating to Excluded Taxes; provided, however, that the foregoing indemnity does not create an obligation to indemnify and the Lessor shall not indemnify any Person for (A) any Losses which would otherwise be the subject of indemnification by the Lessor or any ACF Contributor or parent or subsidiary thereof under any other Transaction Document to the extent indemnification thereby is not available under such Transaction Document by reason of the expiration of any representation, warranty, covenant or agreement or the existence of any "threshold" or other limitation on recovery or (B) any Losses to the extent arising out of, resulting from or relating to (x) any breach of any representation, warranty, covenant or agreement of GECC, the Lessee or any GE Contributor in any Transaction Document including this Lease or (y) any act, omission, event or state of facts occurring or existing during the period ending on the Basic Term Commencement Date and relating to property contributed (indirectly through the GE Member) to the Lessor by any GE Contributor.

(c) Any Lessee Indemnitee or Lessor Indemnitee incurring any Loss, or subject to any indemnification obligation or other liability arising out of, resulting



from or relating to any Loss (in any such case, a "Claimant"), in any case where this Lease provides for an allocation of such Loss, indemnification obligation or other liability on the basis of Comparative Fault, shall, in making any assertion that such Loss, indemnification obligation or other liability is to be allocated on the basis of Comparative Fault, notify the Lessor or the Lessee, respectively, in writing of such assertion, which notice shall be accompanied by documents setting forth in reasonable detail the basis for the assertion in order to afford the Lessor or the Lessee or any Affiliate thereof, as the case may be, an opportunity to dispute whether any portion of such Loss, indemnification obligation or other liability arises out of, results from or relates to (i) with respect to the Lessor, events or a state of facts occurring prior to the Basic Term Commencement Date and (ii) with respect to the Lessee, events or a state of facts occurring both from and after the Basic Term Commencement Date. If the Claims Arbiter determines that any material portion of such Loss, indemnification obligation or other liability arises out of, results from or relates to events or a state of facts occurring prior to and from or after the Basic Term Commencement Date, the Claims Arbiter shall allocate such Loss, indemnification obligation or other liability on the basis of Comparative Fault. Notwithstanding the foregoing, if liability for such Loss, indemnification obligation or other liability may be properly asserted by or on behalf of such Claimant against any sublessee under any End-User Lease or any railroad, such Claimant may not recover on the basis of Comparative Fault against the Lessor, the Lessee or any Affiliate thereof, as the case may be, in respect of such Loss, indemnification obligation or other liability until such Claimant has used reasonable best efforts, or has caused another Person on its behalf to use reasonable best efforts, to recover against such sublessee or such railroad for such Loss, indemnification obligation or other liability, whereupon such Claimant may seek to recover on the

basis of Comparative Fault against the Lessor, the Lessee or any Affiliate thereof, as the case may be, in respect of such Loss, indemnification obligation or other liability only to the extent that such sublessee or such railroad has not been held liable for such Loss, indemnification obligation or other liability. Notwithstanding anything to the contrary herein, the aggregate amount shall not exceed \$10 million that the Lessee or any Affiliate thereof, taken together, may recover against any ACF Contributor or any Affiliate thereof, taken together, for Losses, indemnification obligations and other liabilities based upon Comparative Fault; provided, however, that no amount in respect of any Loss, indemnification obligation or other liability to the extent arising out of, resulting from or relating to any Environmental Matter (whether or not such Loss, obligation or liability involves any Comparative Fault) shall be subject to, limited by or applied against the foregoing \$10 million limitation.

(d) Subject to paragraph (e) of this Section 12, the Lessee shall be entitled to set off against or hold back from any payment, other than payments of Rent, Rent Interest and Indemnification Payments (excluding Lessee Indemnification Payments), that would otherwise be due and payable to the Lessor or any of its Affiliates under this Lease, including, without limitation, the Purchase Price or the Early Purchase Price, Default Interest, Lessee Indemnification Payments and interest thereon, Excess Condemnation Proceeds, and payments to the Lessor under clause (iii) of paragraph (b) of Section 14.1 hereof ("Lease Default Payments"), to the extent not theretofore received by the Lessee Indemnitees: (i) to the extent of any Losses actually incurred by the Lessee Indemnitees the amount of which has been Finally Determined (A) to be indemnifiable (without duplication) by any of the ACF Contributors or any parent or subsidiary thereof pursuant to any of the Transaction Documents or (B) to be the subject of contribution pursuant to Section 9.5 of the Participation Agreement

(without duplication) by any of the ACF Contributors or any parent or subsidiary thereof, in each case to the extent any portion of such Losses (plus interest thereon as provided herein) has not been paid by the ACF Contributors or any parent or subsidiary thereof, (ii) the costs and expenses of the Claims Arbitrator, if any, which the Lessor is required to bear under Section 13(c) hereof, (iii) an amount equal to the Present Value of all Losses (including, without limitation, estimated Losses) in respect of Environmental Matters ("Environmental Losses") which the Claims Arbitrator determines the Lessee Indemnitees would incur resulting from any claim, action, suit or proceeding or any federal, state, local or Canadian or Mexican governmental or administrative order pending against any of such Persons in respect of any Environmental Matter which has been Finally Determined to be the subject of indemnification by any of the ACF Contributors or any parent or subsidiary thereof pursuant to any of the Transaction Documents; provided, however, if this Lease terminates at the expiration of the Basic Term of this Lease, the Lessee shall be entitled to set off and withhold under this clause (iii) an amount equal to the Present Value of all Environmental Losses which have been Finally Determined to be owed by any of the ACF Contributors or any parent or subsidiary thereof pursuant to any of the Transaction Documents to the Lessee Indemnitees as a result of any claim, action, suit or proceeding or any federal, state, local or Canadian or Mexican governmental or administrative order pending against any of such Persons in respect of any Environmental Matter, (iv) an amount equal to the Present Value of all Losses (including, without limitation, estimated Losses) which the Claims Arbitrator determines the Lessee Indemnitees would incur by reason of any ACF Pension Liabilities ("Pension Losses"); provided, however, if this Lease terminates at the expiration of the Basic Term of this Lease, the Lessee shall be entitled to set off and withhold under

this clause (iv) an amount equal to the Present Value of all Pension Losses which the Lessee Indemnitees is Finally Determined to have incurred, (v) an amount equal to all amounts payable by the ACF Contributors or the Lessor to the Lessee pursuant to Section 4(c) of the Tax Indemnity Agreement, and (vi) an amount equal to all amounts payable by any Lessor Indemnatee to the Lessee pursuant to Section 13(e) hereof (the aggregate amount set forth in this paragraph (d) that is withheld, plus interest thereon as provided herein, being referred to herein as the "Holdback Amount").

Notwithstanding the foregoing, not less than 20 days prior to exercising any right of setoff or withholding under this paragraph (c) of this Section 12, the Lessee shall notify the Lessor in writing of its intention to exercise a right of setoff or withholding in respect of Losses incurred by the Lessee Indemnitees, which notice shall be accompanied by documents setting forth in reasonable detail the nature and amount of such Losses in order to afford the Lessor an opportunity in good faith to dispute whether any portion of such Losses has actually or properly been incurred; provided, however, that any failure by the Lessee to deliver such notice within such 20-day period shall not limit the Lessee's right to set off or withhold the Holdback Amount except to the extent the Lessor is materially prejudiced thereby. In determining any Losses payable or subject to claim of setoff or withholding as provided in this Section 12, such Losses shall accrue interest at the Past Due Rate from and including the date on which such Losses are incurred to but not including the date of payment of such Losses or satisfaction of such Losses by means of setoff or withholding under this Section 12 (with appropriate proration for periods of less than one year).

(e) To the extent that the Lessee shall set off or withhold from the Purchase Price under this Section 12 any amount with respect to any Loss which (w) is determined by the Claims Arbiter not to have been properly withheld hereunder, (x) is

thereafter paid by any Person other than the Lessee Indemnitees, (y) was withheld to satisfy an asserted obligation which thereafter is Finally Determined by a court of competent jurisdiction or binding settlement not to be payable by the Lessee Indemnitees, or (z) the Lessee otherwise agrees no longer to withhold, then, in each such case, the Lessee, within two Business Days of such event, shall pay the Over-withheld Amount to the Lessor, together with interest thereon at the Past Due Rate from and including the date on which such amount was withheld to but not including the date such amount is paid to the Lessor. "Over-withheld Amount" shall mean, with respect to any Loss for which an amount has been withheld pursuant to paragraph (d) of this Section 12, the excess of (i) the Present Value of such Loss that was so withheld over (ii) the Present Value of such Loss that would have been so withheld if the actual amount of such Loss had been known at the time of such withholding.

(f) Notwithstanding anything in this Lease to the contrary, until (x) this Lease shall have terminated and (y) the Notes shall have been paid or defeased in full or the Assumption shall have occurred, (i) the sole remedies of the Lessee against the Lessor under this Lease shall be (A) the Lessee's rights of setoff and withholding against Default Interest, Lessee Indemnification Payments and interest thereon, Excess Condemnation Payments, Lease Default Payments, the Purchase Price or Early Purchase Price and other amounts (other than Rent, Rent Interest and Indemnification Payments (other than Lessee Indemnification Payments)) payable hereunder, to the extent (and only to the extent) expressly provided in this Section 12 or Section 16 and (B) the Lessee's right to seek declaratory relief or specific performance to enforce compliance by the Lessor with its covenants and agreements in this Lease; provided, however, that the Lessee may not foreclose upon any security interest in any of the Lessor's property under any Transaction Document until this Lease shall have

terminated and the Notes shall have been paid or defeased in full or the Assumption shall have occurred, (ii) the Lessee agrees that it shall not acquiesce, petition or otherwise invoke, or cause the Lessor to invoke, the process of the United States of America, any state or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government for the purpose of commencing or sustaining a case against the Lessor under a federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the Lessor or all or any part of its property or assets, or ordering the winding up or liquidation of the affairs of the Lessor, and (iii) no amount shall be payable by the Lessor to any Lessee Indemnitee pursuant to this Lease, except pursuant to the exercise by the Lessee of its rights of setoff and withholding set forth in this Section 12 or Section 16. The Lessor hereby agrees, at the request of the Lessee, to execute an agreement in form and substance reasonably satisfactory to the Lessee to provide for the tolling of the statute of limitations solely with respect to claims between the Lessor and the Lessee and the waiver by the Lessor of any defenses based upon laches, waiver, equitable estoppel or similar matters for such period as the Lessee shall be prohibited by reason of this paragraph (f) from asserting any claims the Lessee would otherwise be entitled to assert under this Lease. At such time as this Lease shall have terminated and the Notes shall have been paid or defeased in full or the Assumption shall have occurred, but subject to the limitations set forth in paragraphs (c), (d) and (e) of this Section 12, the Lessee shall have full rights of recourse against the Lessor in respect of any claims which the Lessee shall be entitled to assert hereunder, and the tolling period for such claims arising pursuant to any tolling agreement executed by

the Lessor hereunder shall terminate twenty days after the expiration of all such time periods.

(g) No provision of this Section 12 and no exercise of, or failure to exercise, any right and no taking of, or failure to take, any other action (including any repayment of an over-withholding) under this Section 12, shall limit the rights of the Lessee Indemnitees (i) to assert claims and recover (without duplication) hereunder or under other any other Transaction Document at any time with respect to Losses for which any ACF Contributor or any parent or subsidiary thereof may be liable and (ii) after this Lease has terminated and the Notes have been paid or defeased in full or the Assumption has occurred, to assert claims and recover (without duplication) against the Lessor with respect to Losses for which the Lessor may be liable (including, without limitation, any portion of the Holdback Amount with respect to which any claim of the Lessee to setoff or withholding hereunder has not been satisfied or to the extent that the Holdback Amount is insufficient to fully cover such Losses).

(h) Nothing contained in Section 12 of the TH Railcar Lease or Section 12 of the Master Lease shall restrict the Lessee's rights of setoff or withholding against the Early Purchase Price pursuant to this Section 12. The exercise of any of the Lessee's rights of setoff or withholding under this Section 12 shall be independent of any exercise of any of its rights of setoff or withholding pursuant to Section 12 of the TH Railcar Lease or Section 12 of the Master Lease; provided, however, that the Lessee shall not be entitled to indemnity hereunder for, or to setoff or withhold hereunder in respect of, any Loss or amount, to the extent that the Lessee has been indemnified for, or has exercised a right of setoff or withholding in respect of, such Loss or amount under the TH Railcar Lease or the Master Lease.

(i) The provisions of this Section 12 shall survive the expiration or termination of this Lease. Without limiting the foregoing or the provisions of Section 12(g)(ii), from and after the date upon which this Lease terminates or the tolling period provided for in Section 12(f) expires, whichever later occurs, the security interests under the Lessee Security Agreement shall survive only to the extent of the Lessee's unsatisfied claims, if any, with respect to the Holdback Amount existing as of such date and shall be limited to railcars having a fair market value at such date equal to the amount of such unsatisfied claims; provided, however, that if as of such date the Lessor is subject to a voluntary or involuntary bankruptcy or insolvency proceeding, such security interests shall be limited to railcars having a fair market value at such date equal to 150% of the amount of such unsatisfied claims. From and after the date upon which this Lease terminates or the tolling period provided for in Section 12(f) expires, whichever later occurs, at the reasonable request and at the expense of the Lessor, the Lessee shall execute, deliver, file and record or, at the Lessor's option, permit the Lessor to file and record, any termination statements or other documents or instruments necessary to effect the partial release of the security interests under the Lessee Security Agreement as contemplated by the foregoing sentence.

### Section 13.

#### LESSEE INDEMNIFICATION; INDEMNIFICATION PROCEDURE

(a) The Lessee hereby assumes liability for, and agrees to indemnify, defend, protect, save and hold harmless, the Lessor, the ACF Contributors, the GE Member and the Third-Party Member from and against any and all Losses (including but not limited to Losses arising out of tort or the application of the doctrine of strict liability and Losses related to actions or failure to act with respect to the Railcars by



the Lessor and its Affiliates, including failure to supervise or otherwise influence the conduct of the Lessee) suffered or incurred by the Lessor, the ACF Contributors, the GE Member, the Third-Party Member, any Affiliate thereof or any of their respective beneficiaries, trustees, partners (other than the GE Partner and any Affiliate thereof other than the GE Member), members, stockholders, officers, directors, employees, agents and representatives (each a "Lessor Indemnitee"), to the extent relating to or arising out of or alleged to relate to or arise out of: (i) the Railcars or any part of any thereof; (ii) the violation, alleged violation or enforcement of any agreement, restriction or legal requirement affecting the Railcars or any part thereof or the ownership, operation or use of the Railcars or any part thereof; (iii) any breach of any representation, warranty, covenant or agreement of the Lessee under this Lease or the Second Transition Agreement, including, without limitation, consequential damages (which may include, without limitation, Losses due to the acceleration of indebtedness (whether pursuant to cross-acceleration provisions or otherwise)) by reason of any such breach; (iv) the use, operation, leasing, subleasing, delivery, replacement, condition, maintenance, repair, modification, sale, storage, return, dismantling, abandonment, repossession, redelivery or other disposition of the Railcars prior to or during the Term of this Lease, or any accident or occurrence resulting in damage to or loss of property or injury or death to any Person in connection with, or alleged to have occurred in connection with, any of the foregoing; (v) the imposition of any Lien, other than any Lessor Lien or Permitted Lessor Lien (other than a Permitted Lessor Lien resulting from any action or inaction of any GE Contributor (including, without limitation, in any capacity as the general partner of the GE Member) or any Affiliate thereof), on the Railcars or any interest therein prior to or during the Term of this Lease or following the expiration of the Term if such Lien results from any action or

inaction during the Term of this Lease; or (vi) the inaccuracy of any information referred to in the last sentence of Section 9.1(a) hereof; provided, however, that the indemnity under this Section 13(a) does not create an obligation to indemnify, and the Lessee shall not indemnify, (A) any Person for Lessor Liens, Taxes, Excluded Taxes or ACF Pension Liabilities (except, with respect to Taxes, this clause (A) shall have no effect on any indemnification obligation of the Lessee under any other provision of this Lease or any of the other Transaction Documents), (B) any Lessor Indemnitee (other than the Lessor) in respect of any Losses (v) to the extent arising out of, resulting from or relating to any breach of any representation, warranty, covenant or agreement of any of the ACF Contributors or any parent or subsidiary thereof in any Transaction Document to the extent arising out of, resulting from or relating to (I) title (including, without limitation, the absence of certain Liens) to any of the Railcars included in the Contributed ACF Assets or (II) Environmental Matters, Environmental Losses, or Environmental Costs (as defined in the Participation Agreement), (w) to the extent arising out of, resulting from or relating to any breach of any representation, warranty, covenant or agreement of any of the ACF Contributors or any parent or subsidiary thereof in any Transaction Document (other than the representations, warranties, covenants and agreements to which subclause (v) above applies) during the six-year period from and after the Basic Term Commencement Date, (x) in any case that constitutes a Loss relating to the Railcars included in the Contributed ACF Assets or the Contributed Rights with respect thereto that, but for notice thereof or claim with respect thereto, had occurred and existed on or prior to the Basic Term Commencement Date, (y) in any case to the extent of the liability for any such Loss that is allocated to any ACF Contributor or any Affiliate thereof based upon Comparative Fault or (z) any Losses which would otherwise be the subject of

indemnification by GECC, the Lessee or any GE Contributor under any other Transaction Document to the extent indemnification by GECC, the Lessee or any GE Contributor is not available under such Transaction Document by reason of the expiration of any representation, warranty, covenant or agreement or the existence of any "threshold" or other limitation on recovery, or (C) any Person in respect of the matters set forth in subclauses (v), (w), (x) and (y) of clause (B) of this proviso after (I) this Lease has terminated and the Notes have been paid or defeased in full or the Assumption has occurred and (II) the payment in full of all payment obligations of the Lessee hereunder relating to periods prior to the expiration of this Lease or payable in connection with the termination of this Lease.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Railcars.

(b) Upon payment in full to a Lessor Indemnitee of any indemnity pursuant to this Section 13, the Lessee shall be subrogated to any right of such Lessor Indemnitee in respect of the matter against which such indemnity has been paid; provided, however, that the Lessee may not assert any such right against a Lessor Indemnitee, other than against any ACF Contributor or any parent or subsidiary thereof to the extent of its indemnification obligations to the Lessee Indemnitees under any Transaction Document. Upon the Lessee's written request at any time and from time to time, the Lessor, subject to Section 12, shall, at the expense of the Lessee, take such actions and execute such documents as are necessary or reasonably appropriate to assist the Lessee in the preservation and enforcement against any applicable Person of the right of subrogation of the Lessee; provided, however, that the Lessor shall not be required to take any action or execute any document if, in the reasonable opinion of the Lessor or its counsel, by taking any such action or executing any such document,

the Lessor might be exposed to any liabilities for which it is not indemnified hereunder and the Lessor notifies the Lessee of such fact, unless after such notice the Lessee and the Guarantor agree to indemnify the Lessor for such liabilities in a manner reasonably satisfactory to the Lessor.

(c)(i) A party entitled to indemnification pursuant to either Section 12 or Section 13 of this Lease (an "Indemnitee") shall give the party obligated to provide indemnification (the "Indemnitor") notice in writing (the "Notice") of any claim or other matter as to which indemnification will be sought (an "Indemnified Matter") as promptly as is reasonably practicable after the Indemnitee becomes aware of the Indemnified Matter and shall thereafter keep the Indemnitor reasonably informed with respect thereto; provided that failure of the Indemnitee to give the Indemnitor prompt notice as provided herein shall not relieve the Indemnitor of any of its obligations hereunder, except to the extent that the Indemnitor is materially prejudiced by such failure. The Indemnitor shall be entitled to assume the defense or handling of such Indemnified Matter (without limiting the rights and obligations of the Indemnitor and the Indemnitee under subparagraph (iii) below with respect to the determination, as between themselves, of liability for such Indemnified Matter), by giving written notice of its intention to do so to the Indemnitee within 30 days after receipt of the Notice, with counsel reasonably satisfactory to the Indemnitee at the Indemnitor's own expense, and the Indemnitee shall cooperate with the Indemnitor, at the Indemnitor's expense, in any such action. If the Indemnitor shall assume the defense of such Indemnified Matter, it shall not settle such Indemnified Matter unless such settlement includes as an unconditional term thereof the giving by the claimant or the plaintiff of a full, general release of the Indemnitee, satisfactory to the Indemnitee, from all liability with respect to such Indemnified Matter. As long as the Indemnitor is

contesting any such Indemnified Matter in good faith and on a timely basis, the Indemnatee shall not pay or settle any claims relating to the Indemnified Matter. Notwithstanding the assumption by the Indemnitor of the defense or handling of any Indemnified Matter as provided in this subparagraph, the Indemnitor shall thereafter consult with the Indemnatee upon its reasonable request from time to time with respect to such Indemnified Matter. The Indemnatee shall be permitted to join in the defense or handling of such Indemnified Matter and to employ counsel at its own expense; provided, however, that if the defendants or potential defendants or obligors in connection with any Indemnified Matter shall include both an Indemnitor and an Indemnatee, and such Indemnatee shall have reasonably concluded that counsel selected by Indemnitor has a conflict of interest because of the availability of different or additional defenses to such Indemnatee, such Indemnatee shall have the right to select separate counsel reasonably acceptable to Indemnitor to participate in the defense or handling of such Indemnified Matter on its behalf, the reasonable fees and expenses of which shall be borne by Indemnitor.

(ii) If the Indemnitor shall fail to notify the Indemnatee of its desire to assume the defense or handling of any such Indemnified Matter within the prescribed period of time, or shall notify the Indemnatee that it will not assume the defense or handling of any such Indemnified Matter, then (without limiting the rights and obligations of the Indemnitor and the Indemnatee under subparagraph (iii) below with respect to the determination, as between themselves, of liability for such Indemnified Matter) the Indemnatee may assume the defense or handling of any such Indemnified Matter, in which event it may do so in such manner as it may deem appropriate, and the Indemnitor shall be bound by any determinations made in connection with such Indemnified Matter or any settlement thereof effected by the Indemnatee, unless the

Indemnitor shall, within 20 days after notice of the proposed terms of such determination or settlement, object to such determination or settlement, as the case may be, and agree to pay all reasonable costs and expenses of the Indemnitee in connection with the Indemnitee's defense of such Indemnified Matter, in which case the Indemnitor shall not be bound by any such determination or settlement effected without its consent, so long as the Indemnitor promptly pays such costs and expenses as incurred by the Indemnitee; provided that any such determination or settlement shall not affect the right of the Indemnitor to dispute the Indemnitee's entitlement to indemnification pursuant to subparagraph (iii) below. The failure or election of the Indemnitor to assume the defense or handling of any such Indemnified Matter shall not be deemed a concession that it is required to indemnify the Indemnitee for the subject matter of such Indemnified Matter. The Indemnitor shall be permitted to join in the defense or handling of such Indemnified Matter and to employ counsel at its own expense.

(iii) Prior to the expiration of the Term of this Lease, either the Lessor or the Lessee shall be entitled from time to time to submit to arbitration by an arbiter (the "Claims Arbiter") selected by the Lessor and the Lessee or, if they cannot agree on a selection within 15 days, selected in accordance with the Arbitration Rules:

(a) (I) any pending claim, action, suit or proceeding or federal, state, local or foreign governmental or administrative order to which (1) the Lessee, GECC or the GE Contributors or any of their respective Affiliates or any of their respective directors, stockholders, partners, members or employees (collectively, the "GE Parties"), or (2) the Lessor, the ACF Contributors or any of their respective Affiliates or any of their respective directors, stockholders, partners, members or employees (collectively, the "ACF Parties") is, in any case, a party or is subject, for a determination by the

Claims Arbiter whether the Lessor or any of the ACF Contributors has an indemnification obligation in respect of such matter pursuant to Section 12 or pursuant to any Transaction Document, or whether the Lessee has an indemnification obligation in respect of such matter under Section 13, (II) any matter in respect of which any GE Party or ACF Party has incurred any Losses for which the Claims Arbiter has not previously made a determination whether such Person is entitled to indemnification from the Lessor or any of the ACF Contributors, on the one hand, or the Lessee, on the other hand, for a determination whether such Person is entitled to indemnification hereunder (or, in the case of the Lessee, to exercise a right of setoff or withholding under Section 12) for such Losses; provided that, except where any Transaction Document specifically provides for any determination by the Claims Arbiter of estimated Losses, the Claims Arbiter shall not make any determination as to the amount of such Losses before such Losses are incurred, and (III) in the event of a dispute by an Indemnitor whether any Losses have actually been incurred or properly been incurred by any Indemnitee or whether the Indemnitor is obligated to indemnify with respect thereto, the portion of such Losses which is disputed, for a determination that such amount has been actually or properly incurred, as the case may be, by such Indemnitee or whether the Indemnitor is obligated to indemnify with respect thereto and (b) in the event of a dispute by the Lessor or any of the ACF Contributors, any amount withheld by the Lessee in respect of Environmental Losses pursuant to Section 12(d) or claimed to be subject to setoff or withholding by the Lessee pursuant to this Lease, for a determination by the Claims Arbiter whether the Lessee is reasonably entitled to withhold or to subject to set off or withholding such amount. Within 30 days following its selection, the Claims Arbiter shall, in accordance with the Arbitration Rules and, with respect to any Loss that pursuant hereto is to be

allocated on the basis of Comparative Fault, based upon Comparative Fault (but subject to Section 12(c)), make the determination required by this subparagraph (iii), based solely upon presentations of and documents submitted by the Lessor and the Lessee to the Claims Arbiter sitting in The City of New York or any other place to which the GE Parties and the ACF Parties agree with respect to such determination. The Claims Arbiter's determination shall be final, conclusive and binding upon the Indemnitor and the Indemnitees and may be enforced in any court of competent jurisdiction, but such determination shall not affect the rights of the Lessor and the Lessee against third parties. Notwithstanding the foregoing, the Claims Arbiter shall not be empowered to (i)(x) alter the amount or timing of any payment of scheduled installments of Rent or (y) alter the timing or effect of the exercise or the closing of the Purchase Option or the vesting in the Lessee of title to the Railcars pursuant thereto or (ii) order the termination of this Lease, the TH Railcar Lease, the Master Lease, the Lessee's right to possession of the Railcars hereunder or thereunder or the Purchase Option, each of which matters and the grounds therefor shall be adjudicated by a court of competent jurisdiction. In addition, notwithstanding any disputed matters submitted for arbitration hereunder, the ACF Parties and the GE Parties shall continue to timely perform in full all undisputed obligations under the Transaction Documents. Subject to the provisions of Section 12 or Section 13, as the case may be, the costs and expenses of the Claims Arbiter shall be borne by the losing party with respect to the applicable determination. The Lessor shall, or shall request the ACF Contributors to, assume the defense of, and, subject to the applicable provisions of Section 12, pay any costs and expenses of the Claims Arbiter and Losses properly incurred by the Lessee Indemnitees in respect of, any such claim, action, suit, proceeding or order which are Finally Determined to be the responsibility of any of



the ACF Contributors pursuant to any of the Transaction Documents. The Lessee shall assume the defense of, and pay any costs and expenses of the Claims Arbitrator and Losses properly incurred by the Lessor Indemnitees in respect of any such claim, action, suit, proceeding or order which are Finally Determined to be the responsibility of the Lessee pursuant to any of the Transaction Documents.

(iv) Amounts payable by the Indemnitor to the Indemnitee in respect of any Indemnified Matter for which such party is entitled to indemnification hereunder shall accrue interest at the Past Due Rate from and including the date such Losses are incurred to but not including the date of payment or satisfaction of such Losses (with appropriate proration for periods of less than one year).

(v) To the extent that any payment by an Indemnitor to an Indemnitee constitutes income for federal, state, local and/or foreign income or franchise tax purposes (and taking into account any tax benefits received by such Indemnitee with respect to the Indemnified Matter), the amount the Indemnitor shall be required to pay with respect to any Indemnified Matter shall include a payment to the Indemnitee sufficient to restore such Person to the same position (including reimbursement to the Indemnitee for the utilization of any of its losses, credits or other tax benefits not arising as a result of such Indemnified Matter), after considering the effect of such payment on its federal income taxes and state, local and foreign income taxes or franchise taxes based on net income, that the Indemnitee would have been in had the Indemnified Matter not occurred. If such Indemnitee subsequently receives a refund, credit or return (or would have received a refund, credit or return, but for the existence of a claim for taxes not indemnified against hereunder, a "Deemed Refund"), in whole or in part, of the taxes indemnified hereunder, such Indemnitee shall promptly pay to the Indemnitor the amount of such Deemed Refund or such

refunded, credited or returned taxes, plus interest calculated at the Indemnity Rate (as defined in the Tax Indemnity Agreement) from and including the date of the payment of such indemnified amount to such Indemnitee by the Indemnitor to but excluding the date of payment of such Deemed Refund or such refunded, credited or returned taxes to the Indemnitor by such Indemnitee.

(d) The Lessee agrees to pay, or cause to be paid, and to indemnify and hold each Lessor Indemnitee harmless from, all taxes (including, without limitation, all withholding, income, gross receipts, franchise, goods and services, sales, use, excise, property (real or personal, tangible or intangible), stamp, rolling stock and other ad valorem taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor, any Affiliate of the Lessor or any other Lessor Indemnitee or the Lessee or the Railcars or otherwise, by any federal, state or local government or governmental subdivision in the United States of America or any foreign country or subdivision thereof, upon or with respect to: any Railcar or any part thereof; the manufacture, purchase, ownership, delivery, nondelivery, rejection, leasing, possession, sale, use, operation, rebuilding, replacement, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Lease, any payment made pursuant to this Lease, or the property, the income or other proceeds received with respect to any Railcar (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) all Taxes imposed upon any Lessor Indemnitee or relating to the Railcars with respect to any period or action or failure to act prior to the Basic Term Commencement Date; (ii) Taxes related to the execution and delivery of this Lease or the transactions contemplated by the

Transaction Documents or Financing Documents that occur or are deemed to occur pursuant to Section 2.5, 2.6, 2.8 or 3.7 of the Participation Agreement on the Basic Term Commencement Date (other than sales, use, rental, property, stamp, license, ad valorem, goods and services, recording or filing taxes attributable to the transfer of the Railcars to the Lessee pursuant to this Lease); provided that the foregoing shall have no effect on the obligation of the GE Contributors under Section 10.1 of the Participation Agreement; (iii) Taxes of the United States of America or any state or local government or governmental subdivision thereof or of any foreign country or subdivision thereof imposed on or measured by the gross or net income or gross or net receipts, capital or net worth (other than withholding taxes imposed by any state or local government or any foreign country), or Taxes on doing business, franchise taxes, any minimum Taxes, any superfund or similar taxes, United States withholding Taxes, or any Taxes measured by excess profits of the Lessor or any Affiliate of the Lessor, or value-added taxes in lieu of any such net income or excess profits taxes (other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease or sales, use, goods and services, property, rolling stock or other ad valorem Taxes); (iv) Taxes imposed on or with respect to any Lessor Indemnitee resulting from (a) any transfer by any Lessor Indemnitee of any interest in the Railcars or any part thereof or any interest arising under this Lease or any other Transaction Document or Financing Document occurring subsequent to the Basic Term Commencement Date (other than any sales, use, rental, property, stamp, license, ad valorem, goods and services, recording, filing or other transfer taxes attributable to a transfer pursuant to the exercise of the Purchase Option); provided that the foregoing shall have no effect on (A) the obligation of the GE Contributors under Section 10.1 of the Participation Agreement, (B) any such transfer pursuant to an Event of Default

that has occurred and is continuing or a foreclosure by a holder of a Lien (other than a Lessor Lien and the rights and interests of the Trustee), and (C) any such transfer pursuant to or as contemplated by Section 8 or 11 hereof, or (b) any transfer of any interest in any Lessor Indemnatee other than any such transfer pursuant to an Event of Default that has occurred and is continuing; (v) any Taxes, interest, penalties or additions to tax resulting from the failure of a Lessor Indemnatee to file any return properly or timely or make any certification properly or timely unless such failure results from any failure by the Lessee to prepare such returns, to the extent the Lessee is required to do so hereunder, or to provide such information as required hereunder; (vi) any Tax to the extent resulting from (A) any act or omission of a Lessor Indemnatee not required or permitted under any of the Transaction Documents or Financing Documents or (B) the breach or inaccuracy of any Lessor Indemnatee's representations, warranties or covenants under any Transaction Document or Financing Document; (vii) any Taxes to the extent of the excess of such Taxes over the amount of Taxes of the same type that would have been imposed (or, if less, that would have been subject to indemnification under this Section 13(d)) had there not been a transfer by a predecessor in interest of the Lessor Indemnatee of an interest in a Lessor Indemnatee or the Railcars or any part thereof or interest therein (other than a transfer pursuant to an Event of Default); (viii) any Tax (other than any sales, use, recording, property, stamp, license, ad valorem, goods and services, filing or other transfer taxes imposed in connection with the exercise of the Purchase Option) with respect to the Railcars imposed and which is attributable to the period occurring after the Notes have been paid or defeased in full or the Assumption has occurred and the earliest of (a) the expiration or earlier termination of this Lease, (b) the return of possession of the Railcars to the Lessor in accordance with this Lease, or (c) the

payment in full of the Lessee's obligations hereunder; (ix) any Tax to the extent such Tax would not have been imposed but for the Lessor Indemnatee having engaged in activities in or having had other contacts in the jurisdiction imposing the Tax which activities or contacts are unrelated to the transactions contemplated by the Transaction Documents; (x) Taxes imposed on a Lessor Indemnatee to the extent such Taxes would not have been imposed if such Lessor Indemnatee were a United States person for United States federal income tax purposes; (xi) Taxes imposed on a Lessor Indemnatee as to which such Lessor Indemnatee fails to comply with its contest obligations under this Section 13(d) to the extent such failure to comply has a material adverse effect on the Lessee's ability to contest a claim or proposed adjustment in respect of such Taxes; (xii) Tax imposed on a Lessor Indemnatee resulting from the amendment of any Transaction Document or Financing Document not consented to by the Lessee in writing; and (xiii) Taxes resulting from any violation of ERISA, Section 4975 of the Code, or any comparable laws of any governmental authority (collectively, "Excluded Taxes"). The Lessee shall not be required to pay any Taxes payable by the Lessee hereunder during the period it may be contesting the same in the manner provided below in this Section 13(d).

If any Lessor Indemnatee receives written notice of a claim or proposed adjustment for any Taxes indemnified against under this Section 13(d), such party shall promptly notify the Lessee in writing; provided that the failure to give such notice shall not diminish the Lessee's obligation hereunder except to the extent that the time remaining to contest such claim or proposed adjustment is insufficient to allow Lessee to contest such claim or proposed adjustment using commercially reasonable efforts and, in the event that there are less than 30 days to respond to such claim or proposed adjustment, such Lessor Indemnatee shall, if permitted by applicable law,

request an extension of time to contest such claim or proposed adjustment so that the period remaining to initiate such contest is not less than 30 days from the date of notice to the Lessee. If reasonably requested by the Lessee in writing and so long as the Lessee is prohibited or impaired from doing so in its own name, such Lessor Indemnatee shall, upon receipt of indemnity reasonably satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith and, at the direction of the Lessee, the validity, applicability or amount of such Taxes by (a) resisting payment thereof if legally permissible (provided that the nonpayment thereof does not, in the reasonable opinion of the Lessor Indemnatee, adversely affect the interests of the Lessor Indemnatee in and to the railcars owned by it) and/or (b) not paying the same except under protest, if protest is necessary and proper and/or (c) if payment is made, filing for and making reasonable efforts to obtain a refund thereof by appropriate administrative or judicial proceedings, or both. Such Lessor Indemnatee shall keep the Lessee informed of the status of such contest and, at the Lessee's expense, supply copies of briefs and other pleadings with respect to such contest to the extent they do not relate to claims not indemnified by the Lessee hereunder. The Lessee may also contest, at its own expense, the applicability or amount of such Taxes in the name of the Lessor Indemnatee (except to the extent such contest would necessarily involve the contest of Taxes not indemnified against hereunder, unless, in such case, the Lessee shall have received the prior written consent of the relevant Lessor Indemnatee to pursue such contest). If such Lessor Indemnatee shall obtain a refund or credit of all or any part of such Taxes previously paid or reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, or would have received such refund, credit, interest or

savings but for the existence of a claim for Taxes not indemnified against hereunder (a "deemed refund"), such Lessor Indemnatee shall, unless an Event of Default shall have occurred and be continuing or the Lessee shall have breached any payment obligation under this Lease or shall have breached or otherwise failed to perform any other obligation under this Lease with the effect set forth in Section 21 hereof, within 30 days, pay the Lessee the amount of such deemed refund, refund, credit, or interest, net of expenses.

The amount which the Lessee shall be required to pay with respect to any Taxes which are subject to indemnification under this Section 13(d) shall be an amount sufficient to restore the after-tax position (including reimbursement to the Lessor Indemnatee for the utilization of any of its losses, credits or other tax benefits not arising as a result of such indemnified Taxes), after considering the actual effect of such payment on its United States federal income taxes and state and local income taxes or franchise taxes based on net income and foreign taxes (and taking into account any tax benefits received by the Lessor Indemnatee with respect to such indemnified Taxes), that such Lessor Indemnatee would have been in had such Taxes not been imposed. If such Lessor Indemnatee subsequently receives a refund, credit or return (or would have received a refund, credit or return, but for the existence of a claim for Taxes not indemnified hereunder (a "Deemed Refund")), in whole or in part, of such Taxes, such Lessor Indemnatee shall promptly pay to the Indemnitor the amount of such Deemed Refund or such refunded, credited or returned Taxes, plus interest calculated at the Indemnity Rate (as defined in the Tax Indemnity Agreement) from and including the date of the payment of such indemnified amount to such Lessor Indemnatee by the Indemnitor to but excluding the date of payment of such Deemed Refund or such refunded, credited or returned Taxes to the Indemnitor by

such Lessor Indemnatee. Each Lessor Indemnatee shall provide such certifications, information and documentation as shall be reasonably requested by the Lessee to minimize any payment hereunder.

(e) If, by reason of any payment made to or for the account of a Lessor Indemnatee by the Lessee pursuant to this Section 13, any Lessor Indemnatee at any time realizes a reduction in any Taxes for which the Lessee is not required to indemnify such Lessor Indemnatee pursuant to this Section 13 and which was not taken into account previously in computing such payment by the Lessee, then such Lessor Indemnatee shall promptly pay to the Lessee an amount equal to such actual reduction in Taxes, plus the amount of any additional reduction in Taxes of such Lessor Indemnatee attributable to the payment made by such Lessor Indemnatee to the Lessee pursuant to this sentence. Notwithstanding the previous sentence, (A) such Lessor Indemnatee shall not be obligated to make such payment with respect to any net tax savings to the extent that the amount of such payment would exceed (x) all prior indemnity payments (excluding costs and expenses incurred with respect to contests) made by the Lessee with respect to such Tax pursuant to this Section 13 and less (y) the amount of all prior payments by such Lessor Indemnatee to the Lessee hereunder with respect to such Tax (but any such excess shall be applied against, and reduce pro tanto, any future payment due such Lessor Indemnatee pursuant to this Section 13); (B) if there is a (i) subsequent loss of any such tax savings or refund realized by the Lessor Indemnatee or (ii) reduction of an amount otherwise payable to a Lessor Indemnatee hereunder as a result of any such lost tax savings or refund, such loss or reduction shall be treated as a Tax for which the Lessee must indemnify such Lessor Indemnatee pursuant to this Section 13.



(f) Nothing set forth in this Section 13 shall affect the Lessee's obligations set forth in the Tax Indemnity Agreement. All obligations of the Lessor under this Section 13 are subject to Section 12 hereof.

(g) The rights and obligations under this Section 13 shall be independent of the rights and obligations under Section 13 of the TH Railcar Lease and Section 13 of the Master Lease. The foregoing notwithstanding, no Indemnatee shall be entitled to indemnification pursuant to this Section 13 or Section 13 of the TH Railcar Lease or Section 13 of the Master Lease, as the case may be, for amounts already recovered pursuant to the indemnification provisions of the other.

(h) The provisions of this Section 13 shall survive the expiration or termination of this Lease.

#### Section 14.

##### DEFAULT

14.1. Events of Default; Remedies. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(1) default shall be made in payment of any Rent or Rent Interest when the same shall become due and payable;

(2) failure on the part of the Guarantor duly to observe or perform its covenants set forth in Section 3 or Section 7 of the Guaranty for a period of 180 days after the date on which written notice of such failure, requiring the Guarantor to remedy the same, shall have been given to the Guarantor by the Lessor;

(3) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Lessee or the Guarantor a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization of the Lessee or the

Guarantor under the federal Bankruptcy Code or any other similar applicable federal or state law, and such decree or order shall have continued undischarged and unstayed for a period of 90 days; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee (or other similar official) in bankruptcy or insolvency of the Lessee or the Guarantor or of all or substantially all of its property, or for the winding up or liquidation of its affairs, shall have been entered, and such decree or order shall have continued undischarged and unstayed for a period of 90 days (unless, in the case of any such proceeding against the Lessee, within such 90-day period, the obligations of the Lessee under this Lease shall have been assumed and continue to be assumed by the trustee in bankruptcy in such proceeding in such manner that such obligations shall have the status of administrative expenses under the federal Bankruptcy Code);

(4) the Lessee or the Guarantor shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization under the federal Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee (or other similar official) in bankruptcy or insolvency of it or of its property (unless, in the case of any such proceeding against the Lessee, the obligations of the Lessee under this Lease shall have been assumed and continue to be assumed by the trustee in bankruptcy in such proceeding in such manner that such obligations shall have the status of administrative expenses under the federal Bankruptcy Code), or the Lessee or the Guarantor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(5) an Event of Default shall occur and be continuing under the TH Railcar Lease or the Master Lease; then, in any such case, so long as any such Event of Default shall be continuing, the Lessor, at its option, may do one or more of the following:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee or the Guarantor of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Railcars shall absolutely cease and terminate as though this Lease had never been made (subject to the rights of any lessee or other third party under any End-User Leases), but the Lessee shall remain liable as provided in the second sentence of Section 5 hereof; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Railcars may be located (subject to the rights of any lessee or other third party under any End-User Leases), without judicial process if such can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Railcars and thenceforth hold, possess, sell, operate, lease and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Railcars for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee (i) any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator

is such number of days and the denominator is the total number of days in such full rental period calculated on the basis of twelve 30-day months), (ii) (x) the excess of (I) the present value of the installments of Rent which would otherwise be payable by the Lessee to the Company over the remaining portion of the Basic Term, determined as if the Railcars would have been subject to the Leases for the remainder of the Basic Term, discounted at the Discount Rate (calculated on the basis of four 90-day quarters), over (II) the present value of the rentals which the Lessor reasonably estimates to be obtainable for the Railcars during such period, discounted at the Discount Rate (calculated on the basis of four 90-day quarters), (y) the premium, if any, on the Notes (together with court costs and attorneys' fees incurred as a result of such Event of Default) plus (z) such additional amount as shall be necessary for the Lessor to pay any damages, costs, fees and expenses (including attorneys' fees) and other Losses incurred by any Lessor Indemnatee other than the Lessor, any of the ACF Contributors and their respective Affiliates, directors, stockholders, partners, members and employees, and (iii) (without duplication) all reasonable attorneys' fees and other costs and expenses and all other Losses incurred by the Lessor, any of the ACF Contributors or any of their respective Affiliates, directors, stockholders, partners, members and employees by reason of the occurrence of such Event of Default or the exercise of the Lessor's remedies with respect thereto; or

(c) exercise any other right or remedy available to the Lessor under Applicable Law, including, without limitation, separately enforcing rights and remedies under the Guaranty.

Upon payment of the amounts required to be paid pursuant to paragraph (b) above, all obligations of the Lessee to pay Rent, Rent Interest or any other amounts payable under this Lease in respect of periods following the date of termination of this

Lease shall be deemed to be fully satisfied and discharged; provided that the obligations of the Lessee under this Lease shall survive the expiration or termination of this Lease to the extent provided in Section 5.

Amounts payable by the Lessee under clause (b) of this Section (other than amounts payable in respect of Rent) shall bear interest at the Past Due Rate from the date such amounts were due hereunder to the date of payment thereof.

The foregoing remedies of the Lessor in respect of an Event of Default under this Lease shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in favor of the Lessor existing at law or in equity.

14.2. Remedies; Waiver. Other than as set forth in Section 14.1, in the event of the failure by the Lessee to comply with any obligation under this Lease, the Lessor shall have no right to terminate this Lease and the sole and exclusive remedy available to the Lessor shall be the right to sue for damages, declaratory judgment or specific performance or seek arbitration under Section 13(c)(iii). Except as otherwise provided in this Lease, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, any other requirements with respect to the enforcement of the Lessor's rights under this Lease and any and all rights of redemption. Provided the Lessor gives the Lessee not less than 10 days' prior notice of any proposed sale of the Railcars hereunder, such notice shall be conclusively deemed to constitute proper notice for the purpose of any right of the Lessee to notice of such sale under Applicable Law.

14.3. Failure to Exercise Rights Is Not Waiver.

The failure of the Lessor to exercise, or delay by the Lessor in exercising, the rights granted it hereunder upon the occurrence of any of the contingencies set forth

herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.4. Notice of Event of Default. The Lessee agrees to furnish the Lessor, promptly upon any Responsible Officer of the Lessee becoming aware of any condition which constituted or constitutes an Event of Default or which with the giving of notice or the passage of time or both would constitute an Event of Default, written notice specifying such condition and the nature and status thereof.

14.5. Return of Railcars. (a) Immediately following the expiration or earlier termination of the Term of this Lease, unless the Lessee has exercised the Purchase Option and purchased the Railcars prior to such expiration or termination, the Lessee shall deliver to the Lessor a certificate of a Responsible Officer setting forth the Railcars being returned.

(b) Upon the expiration of the Term of this Lease, unless the Lessee has exercised the Purchase Option and purchased the Railcars prior to such expiration or termination, all Railcars shall be deemed to have been delivered to the Lessor wherever such Railcars are located upon the expiration or termination of this Lease. ALL SUCH RAILCARS DELIVERED TO THE LESSOR SHALL BE DELIVERED ON AN "AS IS, WHERE IS" BASIS, EXCEPT FOR THE SPECIFIC REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF THE LESSEE EXPRESSLY CONTAINED IN THE SECOND TRANSITION AGREEMENT. Subject to the Second Transition Agreement, the Lessee shall, unless the Lessee has exercised the Purchase Option and purchased the Railcars prior to such expiration or termination, at the Lessee's expense, deliver to the Lessor promptly following termination this Lease the Lessee's Books and Records, the Lessor's Books and Records and copies of all End-User Leases and other Contracts to the extent

relating to the Railcars, make arrangements reasonably satisfactory to the Lessor for the use by the Lessor and its successors and assigns of all names, marks, interchange agreements and other rights relating to the Railcars (including, for purposes of clarification, rights relating to the Railcars which are comparable to those transferred (directly or indirectly through the GE Member) by the ACF Contributors to the Lessor pursuant to the Participation Agreement), and assign to the Lessor under the Second Transition Agreement any private car reporting marks assigned to the Lessee under the Administrative Service Agreement.

(c) Unless the Lessee has exercised the Purchase Option, and purchased the Railcars prior to such expiration or termination, the Lessee shall cease reinvestment of Improvement Proceeds forthwith upon the expiration or termination of this Lease, and all unexpended Improvement Proceeds, other than proceeds to which the Lessee is entitled in order to reimburse itself for Capital Improvements previously made in accordance with the provisions of this Lease, shall be paid to the Lessor.

14.6 Survival. The obligations of the Lessee set forth in this Section 14 shall survive the expiration or termination of this Lease.

## Section 15.

### ASSIGNMENT, POSSESSION AND USE

15.1. Assignment. Subject to Section 12, the Lessor agrees not to assign or otherwise create or suffer or permit any Lessor Lien on any of its right, title and interest in and to this Lease or the Railcars.

15.2. Lessee's Rights to Use the Railcars, to Permit Use Thereof by Others and to Sublease the Railcars. (a) So long as this Lease has not been earlier terminated, the Lessee shall be entitled to the possession and use of the Railcars in accordance with the terms of this Lease, subject to Permitted Lessor Liens or

Permitted Liens. The Lessee agrees, at its own cost and expense, to use, maintain, repair, make Capital Improvements to, store, sublease or otherwise take actions or fail to act with respect to the Railcars (except as otherwise required by any provision of this Lease) on such terms and in such manner as is substantially equivalent (without intentional discrimination) to the practice of the Lessee and its Affiliates as in effect from time to time with respect to similar equipment owned and (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them. The Lessee shall comply with usage standards applicable to the Railcars, as provided for in the Lease-outs or under Applicable Laws, including, but not limited to, loading restrictions, except for and to the extent of the customary usage by any sublessee under any Lease-out permitted by the ACF Contributors prior to the Basic Term Commencement Date. In addition, the Lessee shall not, without the prior consent of the Lessor (which consent shall not be unreasonably withheld), cause or permit the subleasing to "tax-exempt entities," as defined in Section 168(h)(2) of the Code, of an aggregate number of Railcars greater than 110% of the aggregate number of Railcars subleased under ACF Lease-outs (as defined in the Participation Agreement) immediately prior to the Basic Term Commencement Date to "tax-exempt entities." For purposes of the foregoing sentence, the withholding of consent by the Lessor to avoid a tax detriment to either the Lessor or any of the Owner Participants (as defined in the Tax Indemnity Agreement) shall not be unreasonable. The Lessee shall be entitled to enter into Contracts relating to the operation or use of the Railcars in accordance with the standards required by this Lease, including, without limitation, this Section 15.2. Such Contracts may extend beyond the Term of this Lease if the terms thereof are consistent with this Lease; provided that any Contract which will expire following the Term hereof does not prohibit assignment of



the rights of the Lessee thereunder to the Lessor. The Lessor acknowledges that the Lessee is entitled to make decisions (without intentional discrimination) with respect to the Railcars to reflect customer preferences and any factors it considers with respect to Railcars in the Lessee's and its Affiliates' fleet (other than the Railcars or other Railcars subject to the Lease) of a similar type, condition and location. The Lessor further acknowledges that actions or failures to act in respect of the Railcars in a manner reasonably intended in good faith by the Lessee to facilitate compliance with the express provisions of this Lease, which may require actions which are not substantially equivalent to the Lessee's actions in respect of its own equipment (including, without limitation, provisions relating to Events of Loss, substitution of Railcars and Capital Improvements), shall not give rise to any claim that the Lessee has not complied with the requirements of this Section and shall be permitted by this Lease. The Lessor or its authorized representatives may at any reasonable time or times inspect the Railcars and, subject to Section 9.2(b), the records of the Lessee pertaining to the Railcars. The Lessee will at all times reasonably requested by the Lessor cooperate with and assist the Lessor in locating and gaining access to the Railcars. Notwithstanding the foregoing, the Lessee shall not, without the prior consent of the Lessor, which shall not unreasonably be withheld, (w) enter into any End-User Lease which provides terms, taken as a whole, materially more favorable to Lessee, as lessor thereof, during the Term of this Lease than such terms will provide to any lessor thereof after the Term of this Lease, (x) enter into any End-User Lease providing the sublessee thereunder with an option to purchase any Railcar, (y) enter into any End-User Lease which would be treated as a sale for tax purposes, or (z) sell any Railcar, except for dispositions of Railcars, as agent for the Lessor, as provided in Sections 8.1(c), 11.2 and 11.3, provided that for purposes of the foregoing, the

withholding of consent by the Lessor to avoid a tax detriment to either the Lessor or any of the Owner Participants (as defined in the Tax Indemnity Agreement) shall not be unreasonable. The Lessee may not assign its rights and obligations under this Lease in the Railcars or any of them to any Person, except that the Lessee may merge or consolidate with any Person, or assign its rights and obligations hereunder in connection with a sale or lease of substantially all assets of the Lessee and its Affiliates engaged primarily in the railcar leasing business to any Person, who, in each case, shall have been approved in writing by the Lessor (which approval will not be unreasonably withheld); provided that the Guarantor shall remain liable as provided in the Guaranty for obligations of such successor or assignee hereunder.

(b) So long as no Event of Default or breach by the Lessee of its agreements herein having the effect set forth in Section 21 hereof shall have occurred and be continuing, subject to Section 12, the Lessor covenants that it will not and will not permit any party claiming by, through or under the Lessor (and not claiming by, through or under the Lessee), including, without limitation, any creditor of the Lessor or its Affiliates or any receiver, custodian, liquidator, trustee, sequestrator or assignee (or similar official) appointed in bankruptcy or insolvency of the Lessor or its Affiliates (or of all or a substantial part of such Person's property), to interfere with the peaceful and quiet possession and enjoyment of the Railcars, the Contributed Rights or the Contracts by the Lessee, except to the extent that any Person may be entitled to interfere therewith by reason of any breach or violation by the Lessee of any obligation under this Lease, any End-User Lease or other Contract to which the Lessee is a party or (ii) of any condemnation, expropriation or requisition by any Governmental Authority

(c) The Lessee shall be entitled to permit the use of the Railcars upon railroad lines in the usual interchange of traffic or pursuant to run-through agreements and to sublease the Railcars to any Person, but only subject to all the terms and conditions of this Lease; provided, however, that no such sublease shall affect the Lessee's obligations hereunder, which shall continue in full force and effect as the obligations of a principal and not of a surety. The Lessor acknowledges and agrees that any sublease of Railcars may extend beyond the Term of this Lease if (i) such sublease was entered into in the conduct of business substantially equivalent (without intentional discrimination) to the Lessee's and its Affiliates' practices as in effect from time to time with respect to similar equipment whether owned or (if a substantial portion of the Lessee's and its Affiliates' fleet (other than the Railcars) is leased) leased by them and otherwise complies with this Section 15 and (ii) such sublease does not prohibit assignment and assumption of the Lessee's rights and obligations as lessor thereunder. Subject to this Section 15.2(c), the Lessee may permit any sublessee to enter into further subleases complying with the terms of this Lease.

(d) Subject to the proration and transition provisions set forth in the Participation Agreement, the First Transition Agreement and the Second Transition Agreement, the Lessee shall be entitled to receive and retain for its own account rent arising under End-User Leases and (other than Improvement Proceeds, which shall be applied as provided in Sections 8 and 11 hereof) all other revenues relating to the Railcars, and, subject to Sections 12 and 13, shall be responsible for all expenses relating to the Railcars, in each case relating to periods on or after the Basic Term Commencement Date and prior to the expiration of the Term of this Lease. The Lessor shall be entitled to receive and retain for its own account rent arising under End-User Leases and all other revenues relating to the Railcars, and, subject to

Sections 12 and 13, shall be responsible for all expenses relating to the Railcars, in each case relating to periods (i) prior to the Basic Term Commencement Date and (ii) after the end of the Term of this Lease, provided the Lessee does not exercise the Purchase Option, and, subject to the Second Transition Agreement, such revenues, expenses and liabilities shall be allocated between the Lessor and the Lessee, respectively, in the same manner as such revenues, expenses and liabilities were allocated between the Lessor, on the one hand, and the ACF Contributors, on the other hand, pursuant to the proration and assumption of liabilities provisions (including Section 4.2) set forth in the Participation Agreement.

#### Section 16.

##### PURCHASE OPTION

16.1 Purchase Option. (a) Provided that (i) no Event of Default has occurred and is continuing and (ii) this Lease has not been earlier terminated, and subject to Section 16.1(b), the Lessee may, not more than one (1) year and not less than six (6) months prior to the end of the Basic Term hereof, deliver to the Lessor an irrevocable written notice of the Lessee's election to purchase all but not less than all of the Railcars, Contributed Rights and Contracts then subject to this Lease (the "Purchase Option") at the Purchase Price payable on the last day of the Basic Term, provided that the Lessee may not exercise the Purchase Option hereunder unless no Event of Default has occurred and is continuing at the time of such exercise. Notwithstanding such notice, the Lessee shall have the right to assign its Purchase Option, but only in connection with the assignment of all its rights and obligations under this Lease, to any third party at any time prior to the expiration of the Term; provided that such assignment shall not affect the Lessee's obligation to pay the Purchase Price or other obligations hereunder. The Purchase Option shall expire automatically six (6) months

prior to the end of the Basic Term, if this Lease has not been earlier terminated and the Lessee shall not have exercised the Purchase Option prior to such date, or upon the expiration of the Basic Term of this Lease if (subject to Section 12) the Lessee shall not have delivered the Purchase Price to the Lessor. Notwithstanding anything to the contrary herein, the Purchase Option shall be deemed to have been automatically exercised by the Lessee upon the exercise by the Lessee of the Purchase Option under Section 16.1(a) of the Master Lease. Unless and until the Purchase Option shall have expired, the Lessor and its Affiliates and their respective officers, directors, employees and representatives shall not, directly or indirectly, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, or participate in any discussions or negotiations with, or enter into any agreement or understanding with any sublessee under any End-User Lease with respect to any period during or following the Basic Term of this Lease.

(b)(i) If at any time during the Term of this Lease, (A) the Lessor, any of the ACF Contributors or any parent, subsidiary or other Affiliate (other than the Lessor) thereof shall fail to pay, by setoff or otherwise, to any of the Lessee Indemnitees any Losses (other than (I) any such Losses solely arising out of, resulting from or relating to any act, omission, event or state of facts which has been Finally Determined to be solely the fault of any GE Contributor or any of its Affiliates and (II) in any case to the extent of the liability for any such Loss that is allocated to the Lessee, any GE Contributor or any Affiliate thereof based upon Comparative Fault) in respect of which it has been Finally Determined (provided that, for the purpose of this Section 16.1(b)(i), any award by the Claims Arbiter shall not be deemed to have been Finally Determined, to the extent such award is being challenged by an action in a court of competent jurisdiction, for so long as such action is being adjudicated) that any of the

Lessor, the ACF Contributors or any parent, subsidiary or other Affiliate (other than the Lessor) thereof is obligated to indemnify such Person pursuant to any of the Transaction Documents and the amount of which has been Finally Determined and, such failure continues for more than 90 days after such amount has been Finally Determined and has been Finally Determined to be payable by any of the Lessor, the ACF Contributors or any parent or subsidiary or other Affiliate (other than the Lessor) thereof, (B) any event of default under the ERISA Indemnity or any other ERISA indemnity agreement entered into pursuant to the ERISA Indemnity or any event of default under the Lessee Security Agreement or the ACF Contributors Security Agreement shall have occurred and be continuing, or (C) any transfer by any ACF Contributor in violation of Article X of the LLC Agreement or the Partnership Agreement or any transfer by the Lessor in violation of Section 11.4 of the Participation Agreement shall have occurred and be continuing, then, without prejudice to the rights of the Lessee against any of the Lessor, the ACF Contributors or any parent, subsidiary or other Affiliate (other than the Lessor) thereof, the Lessee may, by irrevocable written notice, which shall specify in reasonable detail the relevant failure, event of default or violation under clause (A), (B) or (C) (in any case, a "Triggering Event"), delivered to the Lessor and the ACF Contributors at any time during which such Triggering Event is continuing, elect to exercise the Purchase Option; provided, however, that no notice shall be required in connection with the automatic exercise of the Purchase Option pursuant to the last sentence of this Section 16.1(b)(i); and provided, further, that, in the case of (and only in the case of) any event of default under Section 5(c) of the ERISA Indemnity (the "Net Worth Triggering Event"), if at any time following the occurrence thereof and prior to the exercise of the Purchase Option any ACF Contributor, for itself and on behalf of the Lessor, the other

ACF Contributor and each parent, subsidiary and other Affiliate (other than the Lessor) thereof, delivers an irrevocable written notice to the Lessee acknowledging the existence of such Net Worth Triggering Event and the Lessee's right to exercise the Purchase Option in respect thereof and designating the 45-day period from and after the Lessee's receipt of such notice as the Purchase Option exercise period with respect to such Net Worth Triggering Event, then the Lessee may exercise the Purchase Option in respect of such Net Worth Triggering Event only within such 45-day period; provided, however, that (x) the designation of such exercise period with respect to such Net Worth Triggering Event shall not limit the Lessee's right to exercise the Purchase Option in respect of any other Triggering Event (whether or not occurring during such exercise period), (y) the expiration of such exercise period with respect to such Net Worth Triggering Event shall not operate as a waiver of or otherwise limit the Lessee's rights, other than the right to exercise the Purchase Option, against the Lessor, the ACF Contributors or any parent, subsidiary or other Affiliate (other than the Lessor) thereof in respect of such Net Worth Triggering Event, and (z) if such Net Worth Triggering Event shall have been cured before the exercise of the Purchase Option in respect thereof, the Lessee's right to exercise the Purchase Option upon any subsequent occurrence of such Net Worth Triggering Event.

Notwithstanding anything to the contrary herein, the Purchase Option may only be exercised by the Lessee upon the occurrence and continuance of a Triggering Event under this Section 16.1(b) concurrently with the exercise by the Lessee of the Purchase Option under Section 16.1(b) of the Master Lease and the Purchase Option under Section 16.1(b) of the TH Railcar Lease and shall be deemed to have been automatically exercised by the Lessee upon the exercise by the Lessee of the Purchase Option under Section 16.1(b) of the Master Lease.

(ii) Any notice of the exercise of the Purchase Option given pursuant to clause (i) of this Section 16.1(b) shall be given in accordance with the applicable provisions of the Indenture with respect to redemption, defeasance or Assumption of the Notes, as the case may be, and shall provide for the closing of the Purchase Option on the Business Day immediately preceding the date specified for redemption, defeasance or Assumption, as the case may be, in such notice in accordance with the provisions of the Indenture for a purchase price (the "Early Purchase Price") which shall equal the sum of (x) the present value discounted at the Discount Rate (calculated on the basis of four 90-day quarters) of the remaining installments of Rent payable by the Lessee to the Lessor over the remaining portion of the Basic Term, determined as if the Railcars would have been subject to this Lease for the remaining Basic Term, and (y) the Present Value of the Purchase Price, determined as if the Purchase Option would have been exercised and the Purchase Price paid at the end of the Basic Term (the "Early Residual"). The Early Purchase Price shall be deemed to have been fully paid when paid in accordance with subparagraph (iii) of this Section 16.1(b). Neither the Lessor nor the Lessee may close the Purchase Option unless in connection therewith the Lessor will be completely released from its obligations under the Notes and Indenture. Notwithstanding anything to the contrary herein, the Purchase Option may only be closed concurrently with the closing of the Purchase Option under Section 16.1(b) of the Master Lease and the Purchase Option under Section 16.1(b) of the TH Railcar Lease and shall be deemed to be closed upon the closing of the Purchase Option under Section 16.1(b) of the Master Lease and the closing of the Purchase Option under Section 16.1(b) of the TH Railcar Lease and the payment of all amounts payable by the Lessee in connection with such closings and the closing hereunder. The Lessee may assign its rights under the Purchase Option to



any Person at any time at or prior to the closing thereof only in connection with the assignment of all its rights and obligations under this Lease, but no such assignment shall impair or affect the obligations of the Lessor or the Lessee under this Section 16.1(b) or of the Guarantor.

(iii) At the closing of the Purchase Option, the Early Purchase Price shall be paid by the Lessee for application as follows (without duplication of any amounts payable upon any closing of the Purchase Option under Section 16.1(b) of the TH Railcar Lease or Section 16.1(b) of the Master Lease): (A) If the Notes are being redeemed or defeased, the Lessee shall pay, or cause the payment of, the Early Purchase Price in cash (1) first, on the Lessor's behalf, to the Trustee to be applied to the satisfaction of the Shortfall (as defined in the Master Lease), if any, and (2) then, after deducting the Holdback Amount, if any, to the Lessor; and (B) if the Notes are being assumed, (1) the portion of the Early Purchase Price other than the Early Residual shall be deemed to have been paid by virtue of the consummation of the Assumption (including the assumption by the Lessee of the outstanding principal balance of the Notes and accrued interest), and the Lessee shall pay, or cause the payment of, the Early Residual in cash (2) first, on the Lessor's behalf, to the Trustee to be applied to the satisfaction of the Shortfall, if any, and (3) then, after deducting the Holdback Amount, if any, to the Lessor. The Lessor and the Lessee hereby agree that the Lessee shall, on the Lessor's behalf, direct the Trustee to apply the Early Residual (without duplication of any amounts so applied under the TH Railcar Lease) to the satisfaction of the Shortfall, if any.

(iv) On the date of the closing of the Purchase Option under this Section 16.1(b), the Lessee shall provide the Lessor with a certificate specifying, in reasonable detail, the Lessee's determination of the Early Purchase Price and the forms

of payment and the application thereof. This determination shall be conclusive and binding upon the parties unless, within 15 days following its receipt of such certificate, the Lessor disputes any determination set forth therein. If the Lessee and the Lessor are unable to resolve any such dispute, the Lessor may submit the dispute to the Claims Arbiter in accordance with and subject to, mutatis mutandis, the provisions of Section 13(c)(iii).

(c) Upon the closing of the Purchase Option, the redemption, defeasance or Assumption of the Notes and payment in full (subject to the Lessee's rights of setoff and withholding set forth in Section 12) of the Purchase Price or the Early Purchase Price and all other amounts payable by the Lessee hereunder and the performance of all obligations of the Lessee in connection with its exercise of the Purchase Option under Section 16.1 of the TH Railcar Lease or Section 16.1 of the Master Lease, all of the Lessor's right, title and interest under this Lease shall terminate, and the Lessor, subject to Section 12, shall execute and deliver to the Lessee, or the Lessee's assignee or nominee, a bill of conveyance for the Railcars, the Contributed Rights and the Contracts and any other documents as are reasonably necessary to transfer to the Lessee or such assignee or nominee title thereto, free and clear of all Lessor Liens and all security interests under the Back-up Loan Security Agreement and the ACF Loan Security Agreement, if any, as of the closing of the Purchase Option. The Lessor's obligation under this Section 16.1 shall not be affected by any setoff or withholding against the Purchase Price or the Early Purchase Price by the Lessee in accordance with Section 12 hereof. Notwithstanding the provisions of this Section 16.1, the Lessee's right to exercise, and the Lessee's and the Lessor's respective obligations to close the Purchase Option upon any exercise thereof, are subject to the expiration of any applicable waiting period under the HSR Act.

(d) In order to secure the Lessee's right to recover damages for any breach by the Lessor of its obligations upon exercise by the Lessee of its Purchase Option under this Section 16.1 and its obligations under Section 15.2(b) hereof, the Lessor hereby grants to the Lessee a second priority security interest in all Railcars owned by the Lessor which now are or hereafter shall be subject to this Lease. The Lessor agrees, subject to Section 12, to execute such financing statements and other instruments and documents as the Lessee shall reasonably request to evidence and to perfect the security interest granted hereby. The foregoing security interest shall constitute a Permitted Lessor Lien for the purposes of this Lease and (i) to the extent such security interest relates to the Purchase Option, such security interest shall terminate automatically upon expiration of the Purchase Option and (ii) such security interest shall terminate automatically upon the occurrence of any Event of Default pursuant to Section 14 hereof (provided that such security interest shall be automatically reinstated in the event that any such Event of Default shall have been remedied and no longer be continuing). The rights of the Lessee in respect of such security interest, including the right to exercise remedies in respect thereof, shall be subject to the limitations set forth in Section 12(f) hereof.

#### Section 17.

#### RECORDING

The Lessee, at its own expense, shall cause this Lease or a memorandum relating hereto reasonably satisfactory to the Lessor to be filed with the Surface Transportation Board pursuant to 49 U.S.C. Section 11303. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably

requested by the Lessor for the purpose of proper protection of the Lessor's interests in the Railcars, or for the purpose of carrying out the intention of this Lease. The Lessee will promptly furnish to the Lessor evidence of any such filing, registering, depositing or recording.

The Lessee shall also execute and deliver, and cause to be filed, such protective UCC Financing Statements with respect to this Lease as the Lessor may reasonably request.

#### Section 18.

#### NOTICES

Any notice, document, report, certificate, or other communication required or permitted to be given by either party hereto to the other shall be in writing and shall be deemed to have been duly given when received by the parties hereto addressed as follows:

(a) if to the Lessor, c/o General Electric Railcar Services Corporation, at 33 West Monroe Street, Chicago, Illinois 60603, Attention: General Counsel (Facsimile (312) 853-5035), with copies to Railcar Leasing, L.L.C., P.O. Box 98135, Las Vegas, Nevada 89193, Attention: President, and to ACF Industries, Incorporated, c/o Icahn Associates Corp., 767 Fifth Avenue, 47th Floor, New York, New York 10153, Attention: Carl C. Icahn and Robert J. Mitchell (Facsimile (212) 750-5815), with a copy to Gordon Altman Butowsky Shalov Weitzen & Wein, at 114 West 47th Street, 21st Floor, New York, New York 10036, Attention: Marc Weitzen, Esq. (Facsimile (212) 626-0799); or

(b) if to the Lessee, at 33 West Monroe Street, Chicago, Illinois 60603, Attention: President (Facsimile (312) 853-5504) (with a copy to the Guarantor at the address set forth below); or

(c) if to the Guarantor, at 260 Long Ridge Road, Stamford, Connecticut 06902, Attention: General Counsel (Facsimile (203) 357-6791); or at such other address as any party shall hereafter furnish to the other parties in writing.

Section 19.

SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 20.

EFFECT AND MODIFICATION OF LEASE

No amendment, variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee. The Lessee acknowledges that Section 5.1(c) of the LLC Agreement, an abstract of which is attached as Schedule E hereto, provides that certain actions by the Lessor with respect to this Lease require the consent or action of ACF and may be taken by ACF without the concurrence (and over the objection) of the Affiliates of the Lessee.

Section 21.

LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein and the effect of such failure is to affect the value or use of the Railcars in a materially adverse manner (based upon the value and use of the Railcars as of the

Basic Term Commencement Date) or presents the risk of significant damages to the Lessor or any of its Affiliates, subject to prior written notice to the Lessee and only if such material failure continues after giving the Lessee a reasonable opportunity to remedy such failure, then the Lessor or its designee may, but shall have no obligation to, itself perform or comply with such agreement, and the amount of the reasonable costs and expenses of the Lessor or its designee incurred in connection with such performance or compliance, together with interest on such amount at the Past Due Rate from and including the date of performance by the Lessor to but not including the date of payment by the Lessee, shall be payable by the Lessee within two Business Days following demand.

Section 22.

THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any Person not a party hereto (other than the Guarantor, the permitted successors and assigns of any party hereto and, with respect to Sections 12 and 13 hereof, the parties entitled to indemnification thereunder) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

Section 23.

EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lessor and marked "Counterpart No. 1" (which shall be held by the Lessor or its assignee) shall be deemed the original counterpart. The effective date of this Lease is the date first set forth above, notwithstanding that the actual date or dates of execution

hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 24.

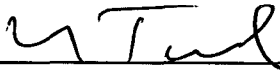
LAW GOVERNING: EXCLUSIVE JURISDICTION

(a) The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York, without regard to the conflict of laws principles thereof.

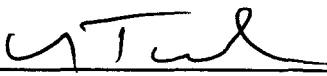
(b) Each party hereto irrevocably consents to the exclusive jurisdiction of any federal or state court in the County of New York, State of New York and by execution and delivery of this Lease irrevocably submits to and accepts for such party and in respect of such party's properties and assets, generally and unconditionally, with respect to any action or proceeding arising out of this Lease, the exclusive jurisdiction of such courts; provided, however, that nothing in this Section 24 shall restrict any party's right to bring any action or proceeding in any federal or state court in any jurisdiction to the extent required to enforce its rights hereunder or under any other Transaction Document with respect to the Contributed ACF Assets or the Contributed GE Assets.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

RAILCAR LEASING, L.L.C., as Lessor  
By: AARDVARK RAILCAR, INC.,  
solely in its capacity as  
Administrative Manager

By:   
Name: Robert H. Tucker  
Title: Vice President

AARDVARK RAILCAR ASSOCIATES,  
INC., as Lessee

By:   
Name: Robert H. Tucker  
Title: Vice President



[illegible]

On the 5th day of March, 1997, before me personally came Robert H. Tucker, known to me to be the Vice President of AARDVARK RAILCAR, INC., Administrative Manager of RAILCAR LEASING, L.L.C., a Delaware limited liability company (the "Company"); that said instrument was signed on behalf of the Company by authority of its Members; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the Company.

Lisa Hochstaedt  
Notary Public

My commission expires:

**LISA HOCHSTADT**  
Notary Public, State of New York  
No 02HO4993279  
Qualified in Kings County  
Commission Expires March 9, 1998

STATE OF NEW YORK )

) SS.:

COUNTY OF NEW YORK )

On this 5th day of March, 1997, before me personally appeared Robert H. Tucker, to me personally known who, being by me duly sworn, says that he is a Vice President of AARDVARK RAILCAR ASSOCIATES, INC.; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lisa Hochstadt  
Notary Public

My commission expires:

**LISA HOCHSTADT**  
**Notary Public, State of New York**  
**No 02HO4993279**  
**Qualified in Kings County**  
**Commission Expires March 9, 1998**